

Ruling 91-03

Vermont Department of Taxes

Date: April 23, 1991

Written By: Jacqueline A. Hughes, Attorney for the Department

Approved By: Joyce H Errecart, Commissioner of Taxes

[Corporation] (Taxpayer) is a photography business operating in [city, state]. In the course of producing a finished product for its customers, it performs certain services. You have requested a formal ruling on the application of Vermont's sales and use tax to these services. This ruling relies on your facsimile of March 26, 1991, to Betsy Anderson, Deputy Commissioner of Taxes.

The sales tax law imposes a tax on receipts from the retail sale of tangible personal property. 32 V.S.A. § 9771(I). Normally, pure service transactions are not subject to the sales tax. When, however, a service is used in the production of tangible personal property, the charge for the service is taxable unless the service is excluded from the tax by 32 V.S.A. § 9701(6). A sale of tangible personal property is defined to exclude: "Professional...and personal service transactions...where tangible personal property is transferred as part of such service transaction so long as no separate charge is made for the tangible personal property and so long as the value of the tangible personal property is essentially an inconsequential element in relation to the value of the service transaction." (emphasis added)

Whether a given transfer of tangible personal property is excluded from the tax by this definition is determined by whether or not the tangible personal property is an important element or the focus of the transaction.

As you have described your business, customers contract with the Taxpayer to create an image on film, a photograph. In order to put that image on film and fulfill its contract, the Taxpayer must first determine what the customer wants and then must perform a series of steps involving both services (set up, modeling, lighting, photographing) and the consumption of tangible personal property (polaroids, film, film processing, paint).

Once the photograph is made, a copy is transferred to the customer with a license to use the photograph as agreed in the contract. Any further use requires renegotiation of the contract. Given the above description, the value of the photograph transferred is not an inconsequential element in relation to the value of the service, but is actually the focus of the transaction. Thus, the entire charge for producing the photograph including any charges for services is taxable under Vermont law. Taxable charges would include the consultation fee, modeling charges, the charge for painting of backdrops, the charge for the use of a graphic artist to design and produce a mechanical, the usage fee (which

would be a license to use and subject to the tax per 32 V.S.A. § 9701(6)), the service fee and any charges for supplies used in the production of the photograph (color films and processing, black and white prints, polaroid film-and slide duplicates).

You indicated that there are occasions when the Taxpayer charges a customer for a consultation which does not result in a contract to produce a photograph. You have asked whether the Taxpayer must collect the sales tax on these consultation fees. There would not be a sales tax on consultation fees which do not result in the production and sale of tangible personal property because the consultation would be a pure service transaction.

Finally, tangible personal property such as film, purchased by the Taxpayer and consumed or destroyed in the process of producing a photograph for sale is exempt under the manufacturer's exemption. You should issue exemption certificates to your supplier for these products. (This does not include any other supplies used, such as office supplies.)

This ruling is issued solely to your firm and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.