

Ruling 91-05

Vermont Department of Taxes

Date: June 11, 1991

Written By: Emily B. Tartter, Deputy Comm. and General Counsel

Approved By: Joyce H. Errecart, Commissioner of Taxes

You have requested a formal ruling on the application of Vermont's sales and use tax. This ruling relies on representations contained in your letter to the Commissioner of Taxes dated October 29, 1990, and the facts presented in the decision of the Appellate Tax Board for the Commonwealth of Massachusetts in *F.W. Faxon Co., Inc. v. Commissioner of Revenue*, Docket No. 107406 (August 17, 1983), which you indicate are exactly the same as your facts.

The facts of *F.W. Faxon Co., Inc. v. Commissioner of Revenue* are as follows. F.W. Faxon Co., Inc. ("Faxon") provides a subscription service for public, corporate and academic libraries. It obtains listings of periodicals published by various publishers and uses these listings to prepare an annual catalog that offers a choice of more than 100,000 periodicals, newspapers, annuals, etc. published by more than 50,000 publishers, together with the price list. Copies of the guide are distributed to potential customers, who use the guide to submit orders for specified periodicals. Faxon orders the periodicals from the publisher and asks the publisher to send the bill to Faxon and send the periodicals directly to the libraries. Faxon bills the libraries for the standard cost of each subscription (including any discount offered by the publisher), plus a service charge.

The Appellate Tax Board in *Faxon* ruled that Faxon acts as the libraries' agent and provides only a nontaxable ordering and payment service for its clients. The Vermont Department of Taxes does not acquiesce in this characterization.

It is the ruling of the Department of Taxes that, under these circumstances, the subscription agency is the agent of the publisher. The subscription agency solicits subscriptions and processes the orders on behalf of the publisher.

When a subscriber orders periodicals from the subscription agency, the Department of Taxes will consider the sale to be a sale from the publisher directly to the third party, but the Department will treat the subscription agency as the agent of the vendor and hold the subscription agency jointly responsible with the publisher for the collection and payment of any tax due on the sale. See 32 V.S.A. § 9704 (copy enclosed).

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.