

## *Ruling 92-11*

Vermont Department of Taxes

Date: October 2, 1992

Written By: Mary L. Bachman, Attorney for the Department

Approved By: Joyce H. Errecart, Commissioner of Taxes

You have requested a ruling as to whether sales of t-shirts by [Corporation] are exempt from the Vermont sales and use tax. This ruling is based on the facts contained in your letter of June 17, 1992 and communicated during our conversation of August 20, 1992.

Facts. [Corporation] is a 501(c)(3) corporation organized in 1985 to facilitate youth exchange programs between the United States and the [Country]. The American students participating in the program pay for their own expenses through various fund-raising activities including raffles, car washes and concerts. They also sell t-shirts bearing the [Corporation] logo. Most of the t-shirts are sold at special events in which the students participate, such as concerts and puppet shows. Students, parents and relatives also buy some t-shirts. Last year 400 t-shirts were sold. No other organization except the schools attended by participating students is involved with the sales in any way.

Ruling. The Vermont sales tax applies to sales of tangible personal property sold at retail in the state. 32 V.S.A. § 9771(1). Certain sales are exempt from sales tax, including: "Any sale...by or to any...[o]rganizations which qualify for exempt status under the provisions of section 501(c)(3) of the United States Internal Revenue Code...excepting sales...which are mainly commercial enterprises; provided, however, (A) that the organization first shall have obtained a certificate from the commissioner stating that it is entitled to the exemption, (B) that the sale...is for the exempt purpose of such organization...." 32 V.S.A. § 9743(3).

"Mainly commercial" is not defined in the sales tax statutes. The determination of whether sales are mainly commercial depends upon the degree to which the activity of the organization intrudes into the marketplace and competes with other persons making similar (taxable) sales. Circumstances relevant to this inquiry are: 1) the volume of sales (both in terms of transactions and receipts); 2) whether the property being sold is of a type sold commercially; 3) whether the property sold is integrated with the exempt purpose of the organization (an example of integration would be a regional historical society selling a text on the history of the region); 4) the existence or lack of a permanent selling location; 5) the frequency or duration of the selling activity; 6) whether the activity is controlled or conducted by members or participants in the organization or

by third parties who market fund-raising packages; and 7) the existence of a paid or permanent sales staff.

Volume of sales, the type of property sold and integration with the organization's exempt purpose are generally the most important considerations in making the determination. While [Corporation] t-shirt sales may compete indirectly with sales of t-shirts by other persons, the intrusion into the marketplace is minimized by the volume of sales. In addition, the sales are not made from a permanent location and they are not continuous, but rather are conducted in connection with occasional events presented by the organization. The fact that the t-shirts bear the [Corporation] logo tends to eliminate competition with commercial sellers.

While it cannot be said that the sale of t-shirts is strongly integrated with the organization's purpose of promoting a youth exchange program, the organization logo on the t-shirts does serve to publicize the program to both potential participants and supporters.

The t-shirts are sold by students participating in the exchange program and the selling activity is controlled by [Corporation] without outside participation.

Based on consideration of the above facts and circumstances, the Department considers [Corporation's] t-shirt sales to be exempt from the Vermont sales tax if [Corporation] has obtained a certificate of exemption from the commissioner as required by section 9743(3)(A).

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.