

## *Ruling 93-04*

Vermont Department of Taxes

Date: January 29, 1993

Written By: Danforth Cardozo, III, Attorney for the Department

Approved By: Joyce H. Errecart, Commissioner of Taxes

You have requested a formal ruling on the application of Vermont's sales and use tax law for purchases on government contracts under four different scenarios presented in your letter of December 31, 1991. This ruling relies upon your representations contained in that letter. The Department makes this ruling on the assumption that all the transactions described in the situations presented take place within the State of Vermont.

### APPLICABLE LAW:

32 V.S.A. § 9771 imposes a five percent sales tax upon the receipts from the sale of tangible personal property sold at retail in the State of Vermont. 32 V.S.A. § 9773 imposes a use tax on any tangible personal property purchased at retail unless the property has already been or will be subject to the sales tax.

32 V.S.A. § 9701(6) provides in part: "Sale, selling or purchase: means any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor...."

32 V.S.A. § 9741(14) provides for a manufacturing exemption from the sales and use tax and reads as follows: "Receipts from the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

(14) Tangible personal property which becomes an ingredient or component part of, or is consumed or destroyed or loses its identity in the manufacture of tangible personal property for sale but does not include fuel and electricity; machinery and equipment for use or consumption directly and exclusively, except for isolated or occasional uses, in the manufacture of tangible personal property for sale, or in the manufacture of other machinery or equipment, parts or supplies for use in the manufacturing process; and devices used to monitor manufacturing machinery and equipment or the product during the manufacturing process. Machinery and equipment used in administrative, managerial, sales or other nonproduction activities, or used prior to the first production operation or subsequent to the initial packaging of a product, shall not be exempt from tax, unless such uses are merely isolated or occasional. Machinery and equipment shall not include buildings and structural components thereof. For purposes of this

subdivision, it shall be rebuttably presumed that uses are not isolated or occasional if they total more than four percent of the time the machinery or equipment is operated. For the purposes of this subdivision, "manufacture" includes extraction of mineral deposits, the entire printing and book-making process, and the entire publication process.

32 V.S.A. § 9743(2) provides for an exemption from the sales and use tax for the U.S. government and provides as follows: "Any sale, service or amusement charged by or to any of the following or any of the following are not subject to the sales and use taxes imposed under this chapter:...(2) The United States of America, any of its agencies and instrumentalities, insofar as it is immune from taxation when it is the purchaser, user or consumer, or when it sells services or property of a kind not ordinarily sold by private persons."

#### DISCUSSION:

Situation One: "[Corporation] purchases a piece of equipment for use on a government contract. This item is required in the performance of the contract, is directly charged to the government, but is not a deliverable under the terms and conditions set forth. The U.S. government takes title to the property upon acquisition, and upon contract completion, decides ultimate disposition."

It appears that [Corporation] is the purchaser and has acquired possession of the piece of the equipment. [Corporation] is the user of the equipment in its performance of the contract. Therefore, [Corporation] is subject to the sales and use tax. 32 V.S.A. § 9701(6), 9771, 9773. (There is insufficient information in the facts as presented for determining whether the equipment is used in the manufacturing process and exempt under 32 V.S.A. § 9741(14).) The fact that the item is charged to the U.S. government, which then takes title upon acquisition, and upon contract completion, decides ultimate disposition, does not exempt the transaction from tax under the governmental exemption found at 32 V.S.A. § 9743(2), since it is [Corporation], and not the government, which is the purchaser, user or consumer under the exemption.

Situation Two: "[Corporation] purchases a piece of equipment for use on a government contract. The item is required in the performance of the contract, is directly charged to the government, but is not a deliverable under the terms and conditions set forth. The U.S. government does not take title to the property."

Since it appears that [Corporation] has both possession of and title to the piece of equipment purchased and is the user of the equipment in the performance of the contract it is subject to sales and use tax. 32 V.S.A. §§ 9701(6), 9771, 9773. (There is insufficient information for determining whether the equipment is exempt under 32 V.S.A. § 9741(14), the manufacturing exemption.)

Situation Three: "[Corporation] purchases an item which is used up in the performance of a government contract. The piece of material is required in the performance of the contract and is directly charged to the government. The U.S. government takes title to

the property upon acquisition, and upon contract completion, the property has no salvage value."

If the item purchased is "used up" in the sense that it becomes an ingredient or component part of, or is consumed or destroyed or loses its identity in the manufacture of tangible personal property for sale, it would be exempt from sales and use tax under the manufacturing exemption. 32 V.S.A. § 9741(14).

Otherwise, it is subject to sales and use tax, as it appears [Corporation] is the purchaser, has acquired possession of the item and is the user of the item in the performance of the contract. 32 V.S.A. § 9701(6), 9771, 9773. The fact that the item is charged to the U.S. government, which then takes title upon acquisition, does not exempt the transaction from tax under the governmental exemption found at 32 V.S.A. § 9743(2), since the government does not appear to be a purchaser, user or consumer under the exemption.

Situation Four: "[Corporation] purchases an item which is used up in the performance of a government contract. The piece of material is required in the performance of the contract and is directly charged to the government. The U.S. government does not take title to the property."

As in Situation Three, above, if the item purchased is "used up" in the sense that it becomes an ingredient or component part of, or is consumed or destroyed or loses its identity in the manufacture of tangible personal property for sale, it would be exempt from sales and use tax under the manufacturing exemption. 32 V.S.A. § 9741(14). Otherwise, it is subject to the sales and use tax as [Corporation] has purchased the item, has title to and possession of the item, and is the user of the item in the performance of the contract.

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.