

Ruling 93-05

Vermont Department of Taxes

Date: March 25, 1993

Written By: Gloria Hobson, Director, Business Taxes Division

Joyce H. Errecart, Commissioner of Taxes

You have requested a formal ruling on the application of Vermont sales and use tax on several purchase options for computer software and hardware. This ruling relies on the factual representations contained in your December 15, 1992 letter.

Your company is considering the purchase of software from an out-of-state vendor. In one transaction, the total software package combines custom designed software used in conjunction with standard software. The custom designed software is 65% of the package and the standard software is 35%. You ask:

1. Is the service for developing custom software a taxable transaction? No. Vermont sales tax does not apply to professional services. 32 V.S.A. Section 9701(6).
2. Is the standard software taxable? Yes. The canned software is considered tangible personal property and subject to Vermont sales and use tax. See *Chittenden Trust Co. v. King* (1983) 143 VT. 271, 465 A.2d 1100.
3. If the systems are billed together, does the presence of the standard software affect the taxability of the customer software? Possibly. The customer software needs to be separately invoiced from the standard software to retain its exemption as professional services exempt from Vermont sales tax.

The computer programming will be performed at the vendor's out-of-state location. The custom software will be transmitted to your company location in Vermont by modem. The standardized programs may also be transmitted to you by modem. You will receive user manuals for the software package printed out-of-state and delivered to you in this state. You ask:

1. Does the transaction in the preceding paragraph incur any use tax liability? Yes. You have received tangible personal property in the form of manuals, standardized software or computer disks which is subject to Vermont sales and use tax.
2. If user manuals are printed and delivered into the state, does this incur a use tax liability? Possibly. If the user manuals are for the customer programming and the vendor does not make a separate charge for the manuals, the manuals are exempt

from sales and use tax under 32 V.S.A. Section 9701(6). User manuals for the standardized programs are subject to sales and use tax.

3. If the manuals are taxable, is the tax on the value of the manuals or on the entire transaction? The sales and use tax on user manuals for the custom programming is based on the charge the vendor makes to you. The sales and use tax on the user manuals for standardized programs again is on the charge made to you. If the user manuals are part of the purchase price for the standardized programming, then the sales and use tax is on the entire transaction.

You also are considering options for hardware to run the computer programs. You could purchase the hardware, which you indicated you are aware would be subject to Vermont sales and use tax. Another alternative is to sign a contract with a service bureau located out of state to rent computer power. In this instance, the software program would be transmitted to the out-of-state service bureau and neither the hardware nor software will enter Vermont. You will not have any ownership interest in the hardware. You ask:

1. Is a contract with an out-of-state service bureau to provide computer services transmitted to you via leased or public lines subject to sales and use tax? No. The transaction occurs out-of-state and does not bring a Vermont sales and use tax liability.
2. Is Vermont tax still due on standardized computer programs and user manuals if these items do not come into your possession in the state? No. Since possession or transfer of title did not occur in this state, no Vermont sales and use tax is due.

You may wish to check with the service bureau home state to determine if you have triggered any tax liability in the state. This state may be able to impose its sales and use tax on the computer programs and you may have a corporate income tax liability with the location of income producing property in that state. The tax laws at the location of the service bureau will apply and may be different from Vermont's tax laws.

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 statutes or regulations.