

Ruling 94-06

Vermont Department of Taxes

Date: August 9, 1994

Written By: Pietra P. Sylvester, Esq.

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

You have requested a ruling on the application of the Vermont sales and use tax law to [Corporation's] contracts with various tax exempt organizations. Specifically, you have requested an opinion as to whether [Corporation], as contractual agent of various tax exempt organizations, can purchase goods and supplies free from sales and use tax. You have also requested the Department to determine whether city, county or local legislation in the State of Vermont preempts State law on the issue of exemption from state sales and use tax. This ruling relies on the representations contained in your letter to the State of Vermont dated May 28, 1993.

Facts: [Corporation] is a food service contractor doing business with various organizations in the State of Vermont. Some of the organizations are state-owned schools that are exempt from sales and use tax pursuant to 32 V.S.A. § 9743(1). [Corporation] is deemed agent by contractual agreement with the tax exempt organizations with which it contracts to do business.

As agent of tax exempt organizations, [Corporation] would like to purchase the following items free of Vermont sales and use tax: 1. Office equipment, china, glassware, cutlery; 2. Plastic or paper disposable and non-disposable packaging and storage items; 3. Non-food items such as cleaning supplies, uniforms, linens, menus, mops, brooms etc. Discussion: Vermont sales and use tax is imposed on the sale of tangible personal property at retail unless the sale is specifically exempt from tax. 32 V.S.A. §§ 9771, 9773. Section 9743(1) provides exemptions from sales and use tax to "The state of Vermont, or any of its agencies, instrumentalities, public authorities, public corporations (including a public corporation created pursuant to agreement or compact with another state) or political subdivisions when it is the purchaser, user or consumer, or when it is a vendor of services or property of a kind not ordinarily sold by private persons."

Section 9743(3) provides an exemption from sales and use tax to "Organizations which qualify for exempt status under the provisions of section 501(c)(3) of the United States Internal Revenue Code, as the same may be amended or re-designated excepting sales, storage or use in activities 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, service, amusement or use is for the exempt purpose of such organization, and (C) that the

vendor keeps a record of the sales price of each such separate sale, the name of the purchaser, the date of each separate sales and the number of the certificate."

Both 9743(1) and (3) apply only if the exempt entity is the purchaser.

Section 9743(1) provides an exemption to the State of Vermont, any of its agencies, instrumentalities, public authorities, public corporations and political subdivisions. [Corporation] is a private corporation and a contractual agreement between [Corporation] and a tax exempt organization which provides that [Corporation] is an agent of the organization does not bind the State of Vermont in its determination of who is the actual purchaser. Therefore, [Corporation] may not claim an exemption under 9743(1) based solely on its contract. Even if [Corporation] is, in fact, an agent of the State, the exemption under section 9743(1) applies only to "...agencies, instrumentalities, public authorities, public corporations... political subdivisions..." Since [Corporation] is a private corporation, it does not qualify for the exemption provided by 32 V.S.A. § 9743(1).

Section 9743(3) provides an exemption from sales and use tax to 501(c)(3) tax exempt organizations unless the sale, use or storage is for an activity that is mainly a commercial enterprise. Even if we assume that [Corporation] has available to it the exemption of a 501(c)(3) tax exempt organization, since [Corporation] is a food service contractor whose activities are mainly commercial, [Corporation] does not qualify for the exemption provided by 9743(3).

Neither section 9743(1) nor 9743(3) provides an exemption from sales and use tax for the purchase of items used by [Corporation] in connection with its contracts with tax exempt organizations. [Corporation] is not exempt under 9743(1) because [Corporation] is not an agency, instrumentality, public authority or public corporation of the State of Vermont. Nor is [Corporation] exempt under 9743(3) because [Corporation] is not a 501(c)(3) tax exempt organization and, although [Corporation] may be a contractual agent of a 501(c)(3) organization, it is a mainly commercial enterprise. Therefore, sales and use tax is due upon the purchase or use of items used by [Corporation] in its contracts. Moreover, local legislation can not preempt state law by creating an exemption from Vermont sales and use tax.

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.