

Ruling 94-09

Vermont Department of Taxes

Date: November 1, 1994

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

Approved By: Betsy Anderson, Commissioner of Taxes

You have requested a formal ruling on the application of Vermont's sales and use tax law which is found at 32 V.S.A. Chapter 233. This ruling relies on the representations contained in your letter of October 14, 1992.

The facts are as follows: [Corporation] (A) is registered to collect and remit sales and use tax in Vermont. A's customer, B, has no physical presence in Vermont, is not registered to collect and remit Vermont sales and use tax, but is, however, registered to collect and remit sales and use tax in the state in which it is located. B's customer, C, is located in Vermont. A's sale to B is a sale for resale. B's sale to C could either be a sale for resale by C, or taxable as a sale to C as an end user. A, having sold the item to B, will ship it via common carrier directly to C. A will ship the product to C from any one of its distribution centers located in [one of four states]. The A invoice generated by this transaction would show B as the "bill to" party and C as the "ship to" party.

You have requested a ruling whether Vermont would consider the transaction described above to be a sale by A to C or some other type of transaction by which Vermont would consider A liable for collecting and remitting tax. You further ask what actions A can take and what documentation must be secured to comply properly with Vermont policy under the facts as described.

Since A is shipping property into Vermont, its sale to B is a Vermont sale. 32 V.S.A. § 9701(6). A is required to collect Vermont sales and use tax and remit it to the Department of Taxes unless B presents a valid exemption certificate to A, 32 V.S.A. § 9745, or unless A obtains sufficient evidence to enable it to sustain the burden of proving the sale is actually for resale. Reg. § 226-6.

Examples of sufficient evidence include, but are not limited, to any one or more of the following: a foreign resale certificate provided by B similar in form and content to the Vermont resale certificate (or an affidavit provided by B containing equivalent information); an affidavit provided by C indicating that C has purchased or will purchase the goods from B, is the end user and has paid or will pay the appropriate sales and use tax (or, if C is a reseller, a resale certificate provided to C or affidavit containing equivalent information).

B could also present a Vermont exemption certificate form indicating the information requested on the form and its home state exemption certificate number.

Any resale certificate or other sufficient information must be taken in good faith by A from B or any other source. The good faith of A would be questioned if A has knowledge of facts which give rise to a reasonable inference that B does not intend to resell the property; for instance, knowledge that B is not engaged in the business of selling that kind of merchandise.

Department of Taxes Formal Rulings 83-7 and 84-18 are superseded to the extent they are inconsistent with this Formal Ruling.

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.