

Ruling 95-08

Vermont Department of Taxes

Date: June 28, 1995

Written By: George H. Phillips, Assistant Director

Approved By: Betsy Anderson, Commissioner of Taxes

You have requested a ruling on whether (Company Name) is subject to sales or use tax on cellular telephones it sells in Vermont. This ruling relies on information provided in your letter of (Date).

Your letter indicates that (Company Name) purchases cellular telephones in [State] for between two hundred and five hundred dollars and sells them for a nominal amount, such as one cent or one dollar, in Vermont. The units are sold for a nominal price because (Company Name) acts as agent for independent providers of cellular telecommunications services. (Company Name) receives an activation commission from the providers for the cellular telephones which it sells on their behalf.

As a condition of the bargain purchase, customers of (Company Name) sign a service contract with the telecommunications service provider. The telecommunication service provider can accept or reject applications for service processed through (Company Name). (Company Name) does not purchase and resell, provide, bill, or receive consideration from customers for the telecommunications service.

(Company Name) is required to pay Vermont use tax under the provisions of Title 32, Vermont Statutes Annotated section 9773(1). The tax is computed on the price paid to acquire the units and is subject to a reciprocal credit for tax paid to another state. If the company has used the units outside of Vermont for more than six months prior to their use in Vermont, the tax is computed on the fair market value, not to exceed cost. 32 VSA 9774(b), 9744(3).

Although a nominal charge is made for the transfer of a cellular phone to a customer, the framework and economics of the transaction indicate that the units are not sold at retail but are used by the company in earning activation commissions.

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.