

Ruling 95-14

Vermont Department of Taxes

Date: August 17, 1995

Written By: Mary L. Bachman, General Counsel

Approved By: Betsy Anderson, Commissioner of Taxes

You have requested a ruling on whether your client, [Company], is required to register to collect Vermont sales and use tax or to register to obtain a resale exemption certificate or number. This ruling relies on the facts contained in your letter of September 27, 1994.

Facts: [Company] is a co-op for office supplies. It is located in [State]. It has no employees, physical location, tangible personal property or inventory in Vermont. It does not solicit business in Vermont.

[Company] members are retailers of office supplies and products located in over forty states. All purchases by members are for resale.

Every coop transaction involves three parties, a manufacturer, a member and [Company]. The only party that may be located in Vermont in any coop transaction is the member. The Vermont member places an order for office supplies with an out-of-state manufacturer. The manufacturer ships the products directly to the Vermont member, who will resell the product at its retail location. The manufacturer will invoice [Company] for the shipment. [Company] will bill its member for the shipment and then remit payment to the manufacturer.

[Company] will have on file the member's resale certificate or a signed Multijurisdiction Uniform Sales and Use Tax Certificate. It will provide the certificate to the manufacturer.

Ruling: [Company] is required to register to collect Vermont sales and use tax.

[Company] is acting as an agent or representative of the out-of-state manufacturers when it bills and collects from coop members. If the manufacturer would have been required to collect sales tax from the member had it collected the purchase price directly from the member, [Company] must collect tax when it performs the collection function. If a member is purchasing supplies for resale and has supplied [Company] with a valid Vermont exemption certificate, [Company] has no obligation to collect tax from that member.

A "person required to collect [sales] tax" includes every vendor of taxable tangible personal property.... 32 V.S.A. § 9701(14). A vendor is "a person making sales of tangible personal property...." 32 V.S.A. § 9701(9). Every person required to collect the

tax shall collect the tax from the purchaser when collecting the price to which it applies. 32 V.S.A. § 9778.

If the manufacturer has any physical presence in the state of Vermont, it is required to collect sales tax and remit it to the State of Vermont unless it receives a valid exemption certificate from the member. The certificate must be signed by the purchaser, bear his name and address and the number of his Vermont registration certificate. 32 V.S.A. § 9745. The manufacturer does not escape that obligation by contracting that obligation to [Company]. 32 V.S.A. § 9704 provides that:

"[w]hen in the opinion of the commissioner it is necessary for the efficient administration of this chapter to treat any...representative...as the agent of the vendor, distributor or employer..., the commissioner in his discretion, treat such agent as the vendor jointly with his principal...for the collection and payment of the tax."

If the manufacturer has no physical presence in the state, it would have no obligation to collect and remit sales tax. *Quill Corp. v. North Dakota*, 504 U.S. ____ (1992). In such case, [Company] would have no obligation to collect and remit 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.