

## *Ruling 95-25*

Vermont Department of Taxes

Date: December 21, 1995

Gloria Hobson, Business Taxes Policy Analyst

Approved By: Edward W. Haase, Commissioner of Taxes

Your letter of November 11, 1995, requested a ruling by the Department on the tax consequences for a company and the company's customers when business activities are carried on by the company within and outside of Vermont. This ruling is based on the information contained in your letter.

Issues: Is the Company subject to Vermont income tax for sales occurring in this state when performing the described services for manufacturers?  
Are the Company's manufacturing customers subject to Vermont income tax for sales into this state as a result of the Company's activities on their behalf?  
Does the Company have an obligation to collect or remit Vermont sales and use tax on the sales of tangible personal property in this state?  
Would Company's manufacturing customers be subject to any Vermont sales and use tax as a result of the Company's activities on their behalf?

Facts: Company accepts and fills orders for a manufacturing customer's products. The Company solicits manufacturing customers by having a Company employee or an independent contractor call at the manufacturer's location or through contacts at a trade show. The Company maintains two offices, neither of which are located in Vermont, and conducts its activities from these offices. The only physical presence of Company in Vermont consists of salespeople soliciting business from manufacturers located in this state or occasional attendance at a trade show held in this state. As stated in your letter, the assumption for purposes of this ruling is that no manufacturing customers of the Company are located in Vermont.

The manufacturer provides the Company with its product either on consignment or occasionally a buy/sell arrangement. Solicitation for the manufacturing customer's product is done by the manufacturer by direct mailings to potential purchasers or advertising in national publications. The purchaser places an order for the product by calling an A800" number or writing to a post office box. The A800" number and the post office box are located outside of Vermont and operated by the Company. The Company is invisible to the purchaser as Company uses the manufacturer's name when answering the phone and on all written documents. The Company accepts the order, ships the product to the purchaser by U.S. mail or common carrier, collects payment, provides service and technical support for the product, and handles product returns or reorders.

Ruling: The Company's income tax obligation - Since the ruling request asks that the conclusions be based on the assumption Company has no manufacturing clients in Vermont, Company does not have a Vermont income tax obligation.

The focus of Company's sales is on providing services to manufacturers to relieve the manufacturers of the retailing of their products. Federal law 15 U.S.C. Section 381(a) prohibits states from imposing a tax on the income derived by a corporation in interstate commerce engaged in the following activities:

- solicitation of orders for sales of tangible personal property
- orders are accepted or rejected at a location outside this state
- orders are filled or shipped from a location outside this state.

However, only the interstate sale of tangible personal property is addressed in 15 U.S.C. Section 381. The Company's solicitation of Vermont manufacturers would be for services which is not immune from state taxation. Should Company service Vermont manufacturing customers, the income derived from these services would be subject to Vermont income tax.

The Company's manufacturing customer's income tax obligation - The income derived from sales of tangible personal property in Vermont would be exempt from Vermont corporate income under protected activities of 15 U.S.C. Section 381.

The Company's sales and use tax obligation - Based on the information in your letter, it appears Company may solicit the sales of its services in Vermont. However, your letter stated that for the purposes of our response, we are to assume none of Company's manufacturing customers have any physical presence in this state. Thus, the solicitation for the sale of tangible personal property derives from the activity of the manufacturing customer who has no Vermont nexus. Company acts as an agent of the manufacturer customer by assuming responsibility for the billing, collection and service aspects of the sales. Agents are jointly responsible for the collection and payment of the tax. 32 V.S.A. Section 9704. Since you state neither the manufacturing customer nor Company have a presence in Vermont, the Company does not have an obligation for collecting and remitting the Vermont sales and use tax on sales of tangible personal property made in Vermont.

Should the manufacturing customer or Company establish Vermont nexus, the Company would become responsible for collection of the Vermont sales and use tax. Nexus is established when there is at least a minimum connection between you or the manufacturing customer and Vermont, such as (but not limited to) you or the manufacturing customer regularly solicit business through employees or agents in Vermont, advertise in local media, deliver the products to this state in vehicles owned by you or the manufacturing client, perform installation or service on the product at a Vermont site, or you or the manufacturing client has a Vermont location. See *Rowe-Genereux, Inc. v. Department of Taxes*, (1980) 138 Vt. 130, 411 A.2d 1345; *Quill Corp. v. North Dakota*, 60 U.S. LW 4423 (1992).

Company's manufacturing customer's sales and use tax obligation - The manufacturer is not obligated for the collection and payment of Vermont sales and use under the

conditions set forth in your letter. If Vermont nexus is established, Vermont would look first to the Company for any failure to collect or remit the tax as the Company holds the fiscal responsibilities of the sales. See the discussion in Company's sales and use tax obligation.

This ruling is issued solely to your business 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