

September 11, 2006

<name>

<company>

<address>

<city, state, zip>

Formal Ruling 2006-02

Dear <name>:

You have requested a ruling regarding whether the Vermont sales and use tax applies to the production and sale of training and marketing videos and television commercials. This ruling is based on the facts contained in your letter of <date>.

According to your letter, you will be producing what are generically referred to as videos – the final product may be in either DVD or VHS format – and charging hourly for your services. Similarly, you will produce television commercials for your clients that are ultimately transferred to the purchaser in a tangible medium. In the alternative, the completed product may be delivered electronically via the internet.

Vermont sales tax is imposed upon the receipts from the sale of tangible personal property sold at retail in the state. 32 V.S.A. § 9771(1). The amount which is subject to the tax includes the cost of materials used in producing the product as well as the cost of labor expended in the production process.\*

When you transfer a DVD or VHS tape to a customer, you are transferring tangible personal property within the meaning of the statute – the video “may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses” – and the amount charged to the customer is therefore taxable. 32 V.S.A. § 9701(7) (definition of tangible personal property). This result is not altered by the fact that the customer does not “own” the original recorded material; a sale includes the “transfer of title or possession or both, exchange or barter; rental, lease or license to use or consume, conditional or otherwise . . . for a consideration.” 32 V.S.A. § 9701 (6); *see also Chittenden Trust Co. v. King*, 143 Vt. 271, 272-73 (1983) (sale of tangible

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\* The legislature has recently passed legislation that will take effect once the State becomes a member of the Streamlined Sales Tax Project (SSTP), an effort to make state sales tax laws more uniform nationwide. The newly amended statutory language explicitly states that costs for materials, labor or service costs, and charges made by the seller for services necessary to complete the sale (other than installation charges) are not deducted from the sales price. *See amended* 32 V.S.A. § 9701(4) (defining sales price). Notwithstanding the difference between current and future statutory language, the substance of the law is unchanged, and the response to your inquiry regarding taxability of the videos under either version of the statute is the same.

computer software tape is subject to tax; Court declines to distinguish computer tape from “other taxable personal property such as films, videotapes, books, cassettes and records”). Indeed, upon transferring the video to your customer, you are transferring to the buyer the right to use the tangible personal property for a consideration.

Your method of charging customers for your work – allocating the charge to your services, rather than to the resulting tangible property – does not make the charge nontaxable. For comparison, consider a customer’s purchase of a piece of artwork. An artist invests considerable time and skill in the creation of a painting, and may even customize the painting to the buyer’s specifications. Nonetheless, the sale is clearly a sale of the tangible product of the artist’s efforts – the artwork – rather than a sale of his or her services, and is therefore taxable. The artist cannot avoid collecting tax on the full sales price of the painting by simply adjusting the method of billing to allocate all or a portion of the sales price to labor.

Note, however, that the result differs when you do not deliver your finished product in a tangible form, but instead transfer the video to the buyer via the internet. Items such as books, movies, or music delivered electronically (excepting prewritten software) are not tangible personal property and are not subject to the tax.

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.

Section 808 of Title 3 provides that this ruling will have the same status as an agency decision or an order in a contested case. You have the right to appeal this ruling within thirty days.

Sincerely,

Judith Henkin  
Attorney for the Department

Approved this \_\_\_\_ day of \_\_\_\_\_, 2006.

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Tom Pelham  
Commissioner of Taxes