

[Date]

[Taxpayer Representative]

[Address]

[Address]

[Address]

Re: Formal Ruling 15-01

Dear [Taxpayer Representative]:

This is a formal ruling for [Taxpayer] (“[Taxpayer]”), a subsidiary of [Taxpayer], regarding the applicability of sales and use tax to [Taxpayer] conference bridging and meeting collaboration products. This ruling is based on representations in your letter of [Date] and my telephone conversation with [Taxpayer Representative] on [Date].

RULING

The [Taxpayer’s] conference bridging and meeting collaboration products as described are not subject to Vermont sales and use tax. Because neither product is subject to the sales and use tax, a bundling of the two products would also not be subject to tax.

FACTS

[Taxpayer] is headquartered outside of Vermont. It is registered with the Vermont Department of Taxes as an annual sales and use tax filer.

[Taxpayer] sells “conference bridging services” and “meeting collaboration software services” to customers in Vermont and elsewhere. It provides these products using equipment located outside Vermont.

Conference bridging product

The conference bridging product allows conference calling among persons who have been given an access code for the calls. An [Taxpayer] customer initially identifies all persons who will have conference call hosting privileges, and these persons are deemed "Moderators." [Taxpayer] provides each Moderator with a toll- or a toll-free telephone number, or both, with which to initiate a conference call. Whether the telephone numbers are toll- or toll-free depends on which [Taxpayer's] product package the customer purchases. [Taxpayer] also assigns each Moderator a unique Moderator access code and unique guest access code.

When the Moderator and guests call the assigned (toll- or toll-free) telephone numbers, they each originate a separate call which terminates at the concierge bridge. The Moderator access code is then required for the Moderator to make the connection from the concierge bridge to the conference bridge, and to allow the Moderator to manage the conference call. The guest access code is required for the guest to make the connection from the concierge bridge to the conference bridge in order to join the conference call. At the Moderator's option, the conference call may also be accessed by the Moderator and guests through an [Taxpayer] Web-based tool by which the concierge bridge dials out to the Moderator or guest.

The Moderator and call participants communicate through the conference bridge, and the conference call does not end until every participant has disconnected from the call; remaining participants may continue talking after some have left the call.

Telephone calls to or from the [Taxpayer's] bridging equipment are routed by telecommunication lines that are owned and operated by third-party telecommunications companies unrelated to [Taxpayer]. [Taxpayer] obtains several toll- and toll-free telephone numbers assigned to its bridging equipment. When the Moderator and guests call the bridge telephone number, they must pay their own telecommunication service provider for any call charges to connect to the bridge

number. If calling from a mobile phone, the Moderator or guest may incur mobile phone charges even if calling a toll-free bridge number. When the Moderator or guests call the toll-free number, or when the concierge dials out to them, [Taxpayer] pays the third-party telecommunications provider for these connections. [Taxpayer] does not charge the Moderator or guests for the calls to the bridging equipment.

[Taxpayer] does charge the customer, per Moderator, both an annual and a monthly subscription fee. The subscription fees vary, depending on the package chosen, and apply whether or not any conference calls are made. In addition, [Taxpayer] charges per minute of connection by each participant to the conference call through the bridging equipment. The per-minute charges vary, depending on whether the conference call connection is a toll call, toll-free, or dial-out by the concierge; though in some packages the charge for toll-, toll-free and dial-out may be the same.

Meeting collaboration product

The meeting collaboration product allows audio or video conferencing combined with the ability to use shared computer screens and computer files during the conference. This product is integrated with the audio or video conference bridging. This product allows customers the ability to host and attend Web conferences from desktop computers and mobile devices. Meeting collaboration allows participants the following features:

- Screen sharing, application sharing, polls, Q&A, chat, notes and whiteboarding;
- Call invitation details synchronized with Outlook calendar;
- Click to initiate call to the concierge bridge or have the concierge bridge dial out to the phone or computer;
- Click to record Web conference;
- Host controls and manages meeting access, audio and video features and file and screen sharing;
- Access to Cloud-based file cabinet storage and file sharing;
- Identification of each speaker during the meeting;
- Connection to a variety of social media applications.

Access to meeting collaboration is through [Taxpayer's] software applications or through various Internet browsers and third-party software applications. [Taxpayer] hosts the software at its

server and network operations centers and third-party data centers, all located outside Vermont. The software is not owned by or under the “physical control” of the customer. [Taxpayer] does not sell any prewritten software delivered to customers on disk or by download to the customer’s computer equipment in Vermont. [Taxpayer] provides its own proprietary products, along with products or services from unrelated providers that it resells to [Taxpayer’s] customers. [Taxpayer] charges customers based on a per-minute meeting collaboration access fee.

Questions

You included the following questions in your letter:

A. Whether or not the [Taxpayer’s] per-minute and per-participant connection fees and subscription fees for conference bridging services which are billed to the customer’s address in Vermont are subject to Vermont sales and use tax, when a Vermont Moderator or the Vermont Moderator’s conference call guests make a toll call originating in Vermont to connect to the [Taxpayer’s] conference bridging equipment located outside Vermont.

B. Whether or not the [Taxpayer’s] per-minute and per-participant connection fees and subscription fees for conference bridging services which are billed to the customer’s address in Vermont are subject to Vermont sales and use tax, when a Vermont Moderator or the Vermont Moderator’s conference call guests make a toll-free call originating in Vermont to connect to the [Taxpayer’s] conference bridging equipment located outside Vermont.

C. Whether or not the [Taxpayer’s] per-minute and per-participant connection fees and subscription fees for conference bridging services which are billed to the customer’s address in Vermont are subject to Vermont sales and use tax, when a Vermont Moderator or the Vermont Moderator’s conference call guests request the [Taxpayer] conference bridge equipment located outside Vermont to dial out to a telephone or computer located in Vermont to connect to the conference call.

D. If the answer to A, B or C is that these services are subject to the Vermont sales and use tax, then are the charges for the customer's conference call participants whose calls originate outside of Vermont to the [Taxpayer's] conference bridge equipment located outside of Vermont also subject to the Vermont sales and use tax?

E. Whether or not the per-minute usage fees charged by [Taxpayer] for online meeting collaboration software services in conjunction with conference bridging services in A, B and C are subject to the Vermont sales and use tax, when a customer located in Vermont remotely accesses [Taxpayer's] software services located outside of Vermont.

F. If the answer to A, B, C, D or E is that one or more of these services are subject to the Vermont sales and use tax while other services are not, and some or all of the taxable and nontaxable services are "bundled" on customer invoices, then would non-invoice billing system information which identifies the separate service components with their respective charges be sufficient documentation to treat each service component separately for tax determination purposes in the event of an audit?

Answers: The subscription fees and the per-minute connection charges for the conference bridging product are not subject to Vermont sales and use tax, whether access is by toll call, toll-free call or dial-out connection. The per-minute usage fee for the meeting collaboration product is also not subject to Vermont sales and use tax. Since neither product is subject to Vermont sales and use tax, a "bundled" charge for both would also not be subject to Vermont sales and use tax.

DISCUSSION

Vermont sales and use tax law

Vermont's sales tax is imposed on "retail sales" of "tangible personal property." 32 V.S.A.

§ 9771(1). A “retail sale” is defined as “any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.” 32 V.S.A. § 9701(5). Services other than fabrication and telecommunications services are not subject to sales tax.

Vermont imposes sales tax on “telecommunications service.” 32 V.S.A. § 9771(5).

“Telecommunications service” is defined as “the electronic transmission, conveyance, or routing of voice, data, audio, video or any other information or signals to a point, or between or among points. 32 V.S.A. § 9701(19). However, taxable “telecommunications service” does not include “ancillary services” such as “voice mail services” and “vertical service.” 32 V.S.A. §§ 9701(19)(H); 9701(42). And non-taxable “vertical service” is defined to include “conference bridging services,” which in turn is defined as

Non-taxable ancillary services include the following:

1. “Conference bridging service” means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the “telecommunications services” used to reach the conference bridge.

....

Reg. § 1.9771(5)-2.B.1.

Special rules apply to taxation of a “bundled transaction,” in which two or more distinct and identifiable products are sold for one non-itemized price, and the sales price does not vary based on the customer’s selection of items in the bundle. Reg. § 1.9701(4)-3. In general, if any item in the bundle is subject to sales tax, the price of the entire bundle is subject to sales tax, with certain exceptions. Id.

One of these exceptions applies if a non-taxable service which is the “true object of the transaction” is bundled with a taxable service or taxable tangible personal property, and the taxable item (a) is provided exclusively in connection with the “true object” service, and (b) is “essential to

the use of” the “true object” service. Reg. § 1.9701(4)-3.C.1, 2. In this case, no sales tax would apply to the bundle.

A second exception applies if the sales price of the taxable items in the bundle is “de minimis,” meaning ten percent or less of the total sales price of the bundle. Reg. § 1.9701(4)-3.C.3.

If the purchaser is given any invoice or receipt or other statement of the price paid for a taxable item, the sales tax must be shown separately on the statement. 32 V.S.A. § 9778.

Conference bridging product

While the conference bridging product would fall under the general definition of taxable “telecommunications service” as the “electronic transmission of voice between or among points,” it is specifically exempted as “vertical service” and “conference bridging service” as defined in the Regulation. As a result, the charges for the [Taxpayer’s] conference bridging product, including both the subscription fees and the per-minute access charges, would not be subject to Vermont sales and use tax.

If [Taxpayer] were to bill its customers specifically for the use of its toll-free numbers and concierge dial-out service to reach the conference bridge, [Taxpayer] might be viewed as selling taxable telecommunications services. [Taxpayer], however, does not charge for the Moderator or guest toll-free or concierge dial-out calls. To the extent that [Taxpayer’s] costs for the toll-free and dial-out are incorporated into its conference bridging product fees and per-minute charges, there is no taxable “bundled transaction,” because the toll-free and dial-out telecommunications service is essential to the use or receipt of the conference bridging, is provided exclusively in connection with the conference bridging, and the true object of the transaction is the exempt conference bridging. Reg. § 1.9701(4)-3.C.2.

Meeting collaboration product

Your meeting collaboration product is also not subject to Vermont sales and use tax. The meeting collaboration product provides additional Web conferencing abilities during an audio or video conference call. Your customer does not receive a disk containing [Taxpayer's] software and does not download or host the software, and does not appear to directly access your software in any way. Instead, your software provides the customer during an audio or video conference with the added ability to access and share information on the Web conference site, access Cloud-based storage and sharing, and access social media applications.

The meeting collaboration product is also not a "telecommunications service," because what is being sold to the customer is not "the electronic transmission, conveyance, or routing of voice, data, audio, video or any other information or signals to a point, or between or among points." The customer and participants pay their own telecommunications providers for their Web access and voice transmission charges. [Taxpayer] is selling the ability to access and share information at the Web conference site during the conference.

As a result, the meeting collaboration product is not subject to sales and use tax.

Because neither the conference bridging product nor the meeting collaboration product is subject to the sales and use tax, a bundling of the two products would also not be subject to tax.

Location of ATS conference bridging equipment

You are correct that if [Taxpayer] were to move its conference bridging equipment to Vermont, that fact alone would not change the sales tax results described in this ruling, based on current law.

Cancellation of sales tax registration and refund of any sales taxes remitted

You are also correct that [Taxpayer] has no obligation to register to collect Vermont sales tax if its activities in Vermont are limited to the nontaxable activities described in this ruling.

You also indicated that you may request a refund of sales taxes already remitted. Refunds are governed by 32 V.S.A. § 9781, which provides that a refund must be requested within three years from the date the return was required to be filed. No refund may be made until [Taxpayer] establishes to the satisfaction of the Commissioner that [Taxpayer] has repaid its customers the amounts for which application for refund is made. 32 V.S.A. § 9781(a). Repayment to customers would not be required if the tax was paid by [Taxpayer], but not collected from its customers.

GENERAL PROVISIONS

This ruling will be made public after deletion of the parties' names and any information which may identify the parties. A copy of this ruling showing the proposed deletions is attached, and you may request within 30 days that the Commissioner delete any further information that might identify the parties. The final discretion as to deletions rests with the Commissioner.

This ruling is issued solely to the taxpayer and is limited to the facts presented, as affected by current statutes and regulations. Other taxpayers may refer to this ruling, when redacted to protect confidentiality, 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 statutes or regulations.

You have the right to appeal this ruling within 30 days. 3 V.S.A. §§ 808, 815.

Emily Bergquist

Date

Approved:

Mary N. Peterson
Commissioner of Taxes

Date