

Ruling 92-02

Vermont Department of Taxes

Date: February 3, 1992

Written By: Danforth Cardozo, III, Attorney for the Department

Approved By: Joyce H. Errecart, Commissioner of Taxes

You have requested a ruling on the application of Vermont taxes to an electronic information and communications product. This ruling relies on the factual representations contained in your letter of September 2, 1991.

[Corporation] provides electronic information services primarily to farmers or ranchers. The information is view only video text. [Corporation] supplies data receiving equipment to the customer. The customer may not receive the data except on this equipment. [Corporation] retains ownership of the equipment at all times. Customers pay an initiation fee and then a monthly fee for subscription to information packages and the data receiving equipment. [Corporation] also sells transmission services to third parties who send electronic messages to [Corporation] subscribers.

1. Electronic Mail or Messages: The sale of electronic transmitting capability to third parties for receipt by [Corporation] customers is a sale of services and not subject to Vermont sales tax. 32 V.S.A. § 9701(6).
2. Basic Information Package, Additional Services, and Initiation Fee: The package provides both the electronic information and the data receiving equipment. The monthly charge covers both the information and the use of the equipment with no differentiation.

On the facts presented, it appears that [Corporation]'s supply of data receiving equipment is an integral element of the transaction for which [Corporation] makes one monthly charge. The charge is subject to Vermont's 5% sales tax on each payment. 32 V.S.A. § 9771. The tax must be separately stated on the invoice. 32 V.S.A. § 9708. The one time initiation fee appears to be an additional charge for the data and equipment package, and would be treated the same as the monthly charge.

3. Agricultural Exemptions: Vermont exempts machinery and equipment used directly and exclusively in the production of an agricultural product for sale. 32 V.S.A. § 9741(25). The information service and data receiving equipment would fall into

agricultural management or education, not production, and therefore would be taxable. Regulation 1.9741(25)8.

4. Additional Issues: In response to your additional questions: There are no city, local or county taxes which apply to [Corporation]'s sales. Also, although Vermont has a compensating use tax, it is not imposed on property subject to the sales tax. 32 V.S.A. § 9773.

You should also be aware that [Corporation] ownership of income producing property in this state creates nexus for corporate income tax. [Corporation]'s Vermont sales are allocable to Vermont and subject to corporate income 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.