

Ruling 93-08

Vermont Department of Taxes

Date: July 2, 1993

Written By: Gloria Hobson, Director, Business Taxes Division

Approved By: Emily Bergquist Tartter, Deputy Commissioner for
Joyce H. Errecart, Commissioner of Taxes

You have requested a formal ruling on the application of Vermont sales and use tax on several purchase options for computer software and hardware. This ruling is a revision of the formal ruling issued March 25, 1993 to incorporate additional information and ruling requests. This ruling relies on the factual representations contained in your letters of December 15, 1992 and April 8, 1993.

Facts: Your company is considering the purchase of software from an out-of-state vendor. The total software package combines custom designed software used in conjunction with standard, or canned, software. The custom designed software is 65% of the package and the canned software is 35%. You ask:

1. Is the service for developing custom software a taxable transaction? No. Vermont sales tax does not apply to professional services. 32 V.S.A. Section 9701(6).
2. Is the canned software taxable? If the canned software is received as tangible personal property and not transmitted electronically it is subject to Vermont sales and use tax. See *Chittenden Trust Co. v. King* (1983) 143 VT. 271, 465 A.2d 1100.
3. If the systems are billed together, does the presence of the canned software affect the taxability of the custom software? Possibly. If the canned software is received in a tangible form, the custom software services need to be separately invoiced to retain exemption as professional services.

Facts: The computer programming will be performed at the vendor's out-of-state location. The custom software will be transmitted to your company location in Vermont by modem. The canned programs may also be transmitted to you by modem. You will receive user manuals for the software package printed out of state and delivered to you in this state. You ask:

1. Does the transaction in the preceding paragraph incur any sales and use tax liability? Both custom and canned computer software transmitted by modem would be exempt. When transmitted electronically, the canned software loses its character as tangible personal property. See *Chittenden Trust Co. v. King*, (1983) 143 Vt. 271,

465 A.2d 1100. The receipt of custom software is exempt as a service whether received by modem or conventional tape or disk format.

2. If user manuals are printed and delivered into the state, does this incur a sales and use tax liability? Because custom software is a service, tangible personal property received in conjunction with the custom software services is exempt provided no separate charge is made for the property and the value of the tangible personal property is an inconsequential element in relation to the value of the services. See 32 V.S.A. Section 9701(6).

Canned software user manuals are subject to sales and use tax based on the charge made.

3. If the manuals are taxable, is the tax on the value of the manuals or on the entire transaction? Custom software user manuals are subject to sales and use tax when a separate charge is made for the manuals. The sales and use tax is based on the separate charge for the manuals and not the service portion of the transaction. See 32 V.S.A. 9701(6).

Canned software user manuals are taxable. If there is one charge for the canned software which includes the user manuals, the entire charge is taxable even if the canned software was received electronically. If a separate charge is made for canned software received electronically and the user manuals delivered into this state, only the charge for the user manuals is subject to sales and use tax.

Facts: You also are considering options for hardware to run the computer programs. You are aware that if the company purchases the hardware, it would be subject to Vermont sales and use tax. Another alternative is to sign a contract with a service bureau located out of state to rent computer power. In this instance, the software program would be transmitted to the out-of-state service bureau and neither the hardware nor software will enter Vermont. You will not have any ownership interest in the hardware. You ask:

1. Is a contract with an out-of-state service bureau to provide computer services transmitted to you via leased or public lines subject to sales and use tax? No. The transmission of information to you via leases or public lines is a service and not subject to sales and use tax.
2. Is Vermont tax still due on canned computer programs and user manuals if these items do not come into your possession in this state? No. Since neither transfer of possession nor title occurred in this state, no Vermont sales and use tax is due.

You may wish to check with the service bureau home state to determine if you have triggered any tax liability there. That state may impose its sales and use tax on the computer programs and you may have a corporate income tax liability due to location of income producing property in that state. The tax laws at the location of the service bureau will apply and may be different from Vermont's tax laws.

Facts: Packaged and custom software plus manuals and documentation are electronically transmitted to you. You ask:

1. Is the receipt of software transmitted to you electronically subject to tax? Sale of canned software is considered the sale of tangible personal property. However, when transmitted electronically the canned software loses its character as tangible personal property and is not subject to the sales and use tax. See *Chittenden Trust Co. v. King* (1983) 143 VT. 271, 465 A.2d 1100.

Sales of custom software is considered a service transaction. Services are not taxable under Vermont sales and use tax law. Therefore, receipt of the custom software is exempt whether conveyed by electronic methods or conventional methods of disks or tape. See 32 V.S.A. Section 9701(6).

Facts: The purchase of user manuals for the computer software is being considered. This purchase would be a separate transaction with separate invoicing and handling. You ask:

1. Will the purchase of the user manuals cause the computer software electronically transmitted to you to become subject to sales and use tax? Canned program user manuals are subject to the sales and use tax. The electronic transmission of the canned program and user manuals is the transfer of an intangible which is not subject to tax. The transfer of hard copies of the user manuals remains a sale of tangible personal property. Since the manuals will be invoiced separately from the electronically transmitted software, the tax is based on the charge made to you for the user manuals only.

Custom program user manuals would generally be considered part of the computer service transaction. Tangible personal property conveyed to the customer in the course of providing computer services are exempt provided no separate charge for the tangible personal property is made and the tangible personal property is of inconsequential value in relation to the value of the computer services. See 32 V.S.A. Section 9701(6).

Custom program user manuals purchased through separate invoicing and handling are subject to tax based on the charge made.

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 statutes or regulations.