

Ruling 94-08

Vermont Department of Taxes

Date: November 1, 1994

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

Approved By: Betsy Anderson, Commissioner of Taxes

You have requested a formal ruling on the application of Vermont's sales and use tax law which is found at 32 V.S.A. Chapter 233. This ruling relies on the representations contained in your letter of November 16, 1992.

The facts are as follows: [Corporation](A), which is registered to do business in Vermont, has entered in an agreement with a buyer, B, who is not registered to do business in Vermont. This agreement requires A to ship equipment which is manufactured outside of Vermont, via a common carrier, directly to B's customer, C, who is located in Vermont. B has stated that his purpose for buying the equipment is to sell it to C in the ordinary course of business. Because B is not registered in Vermont, he is not able to give A a Vermont resale certificate with a Vermont certificate number. B is registered to do business outside of Vermont and has secured resale certificates outside of Vermont. C is a tax exempt organization and has provided A and B with proof of its exempt status.

You have asked whether A has an obligation to collect Vermont sales tax. You further asked whether A may avoid the tax liability by accepting proof of C's exempt status in good faith, and what documents A could accept in lieu of payment of tax or a valid Vermont resale certificate to satisfy Vermont that no tax need be collected by A. Since A is shipping property into Vermont, its sale to B is a Vermont sale. 32 V.S.A. § 9701(6). A is required to collect Vermont sales and use tax and remit it to the Department of Taxes unless A presents a valid exemption certificate, 32 V.S.A. § 9745, or unless A obtains sufficient evidence to enable it to sustain the burden of proving the sale is actually for resale. Reg. § 226-6.

Examples of sufficient evidence include, but are not limited, to any one or more of the following: a foreign resale certificate provided by B similar in form and content to the Vermont resale certificate (or an affidavit provided by B containing equivalent information); an affidavit provided by C which shows that C has purchased or will purchase the goods from B and is the end user and is exempt from sales and use tax or has paid or will pay the appropriate sales and use tax. B may also present a Vermont exemption certificate form indicating the information requested on the form and its home state exemption certificate number.

Any resale certificate or other sufficient information must be taken in good faith by A from B or any other source. The good faith of A would be questioned if A has knowledge of facts which give rise to a reasonable inference that B does not intend to resell the property; for instance, knowledge that B is not engaged in the business of selling that kind of merchandise.

The fact that the resale from B to C is a sale to an exempt organization is not in and of itself relevant to the issue of whether the sale by A to B is a sale for resale under Vermont law. Therefore, accepting information of C's tax exempt status alone without further information showing the sale from A to B was a sale for resale may be insufficient.

Department of Taxes Formal Rulings 83-7 and 84-18 are superseded to the extent they are inconsistent with this Formal Ruling.

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.