

Ruling 95-03

Vermont Department of Taxes

Date: March 8, 1995

Written By: Pietra P. Sylvester, Attorney for the Department

Approved By: Elizabeth Anderson, Commissioner of Taxes

You have requested a ruling regarding whether the Vermont sales and use tax applies to the sale of either a photographic transparency or the right or license to use a photographic transparency or reproduced image.

This ruling relies on representations contained in your January 4, 1994 letter to Robin Reed and in your January 20, 1994 letter to former commissioner Joyce Errecart.

Facts: You are a photographer and you own the copyrights to the original photographic images you create. You license the use of your photographic image, which may take the form of a transparency, for example. In some transactions, your customer takes possession of the image prior to your agreement to license its use. In other transactions, your images are reproduced by other artists, for example, painters. In turn, these reproductions are used by your customer for a fee under the terms of an agreement with you.

Discussion: Vermont imposes a five percent sales tax on receipts from the sale of tangible personal property sold at retail in Vermont. 32 V.S.A. § 9771. Under Vermont law, a sale is defined as "any transfer of title or possession or both, ... lease or license to use or consume, conditional or otherwise..." 32 V.S.A §9701(6). In Vermont, tangible personal property is "personal property which may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses... but shall not include rights and credits, ... and similar evidences of indebtedness or ownership." 32 V.S.A §9701(7). The word "rights" as used in section 9701(7) clearly refers to indicia or evidence of indebtedness or ownership, not to a right to use property in the sense of a license to use.

Therefore, when you transfer for value title, possession or license to use tangible personal property in the form of a transparency or photo, for example, your transfer is taxable under Vermont law, regardless of whether the transaction occurs in more than one step as described in the facts above.

A transfer for value of a license to use an image which has been reproduced by another artist is also taxable. Although the licensed image has been reproduced and takes on a different form, without your image, there could be no reproduction. Therefore, it is the original image that is of value to your customer. The right to use an image cannot be separated from the property itself. See *Chittenden Trust Company v. King*, 143 VT 271,

465 A.2d 1100 (1983); Mt. Mansfield Television v. Commissioner of Taxes, 133 VT 284, 336 A.2d 193 (1975).

This ruling is issued solely to you 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 case of any change in the relevant statutes and regulations.