

## *Ruling 95-18*

Vermont Department of Taxes

Date: November 20, 1995

Written By: Gloria Hobson, Business Taxes Policy Analyst

Approved By: Betsy Anderson, Commissioner of Taxes

You have requested a ruling on how Vermont sales and use tax applies to sales, training, and maintenance of computer software. This ruling is based on the facts contained in your letter dated October 16, 1995.

Issues: Is the purchase of a computer software license subject to sales tax?  
Is a separately stated charge for training on use of the computer software subject to sales tax?  
Is a separately stated charge for maintenance of the computer software subject to sales tax?

Facts: A hotel qualified to do business in Vermont contracts with a software company to provide a computer program for use in the hotel business. The contract includes separate provisions and pricing for the software, software modifications, training, and maintenance.

Ruling: Vermont imposes a sales tax on the retail sale of tangible personal property. 32 V.S.A. 9771(1). Sale is defined in 32 V.S.A. 9701 (6) as: "(6) Sale, selling or purchase: means any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume (emphasis added), conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor;..." The sale of or license to use off-the-shelf or canned software is considered the sale of tangible personal property and subject to sales tax. See *Chittenden Trust Co. v. King*, (1983) 143 Vt. 271, 465 A.2d 1100. You also indicated modifications to the software may be done and are separately priced. Without further information on the type or extent of the modifications, a determination cannot be made as to the taxability of these charges.

Vermont taxes the sale of tangible personal property. Therefore, training on the use of computer software is not taxable as long as the charge is separately stated or invoiced from the taxable sale of the software.

Generally, separately stated charges for maintenance of computer software are exempt. The maintenance agreement gives the customer a right to receive goods and services, but the maintenance agreement rights themselves are not the sale of tangible personal property. When tangible personal property is used to fulfill obligations under the

agreement, the vendor offering the maintenance agreement is the user or customer, and the use tax is due from the vendor. However, if the vendor separately bills the customer for tangible personal property, a taxable sale occurs and the vendor collects sales tax from the customer based on the charge made.

This ruling is issued solely to your corporation 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 regulation.