

## *Ruling 95-22*

Vermont Department of Taxes

Date: December 15, 1995

Written By: Gloria Hobson, Business Taxes Policy Analyst

Approved By: Edward W. Haase, Commissioner of Taxes

You requested a formal ruling in your letter of October 17, 1995 on how Vermont sales and use tax applies to various sales made by [Taxpayer]. This advice is based on the facts contained in your letter.

Issue: How does Vermont sales and use tax apply to the following sales made by [Taxpayer]: service calls, installation, shipping charges, relocate and reinstall, equipment, training, ease buy out, configuration charge, cabling, data recovery, cost per copy.

Facts: [Taxpayer] provides computer systems which consist of integrated computer hardware and software communications network. Your customers use the computer systems to track, record, and produce reports on the usage of office equipment such as photocopy and facsimile machines. [Taxpayer's] system is installed on the customer's office equipment, and the customer may own or lease the system.

Ruling: Service calls are invoiced to customers who do not have a maintenance contract. The invoice includes labor and parts, which are not separately stated. Generally, the majority of the cost is for labor.

When the repair is reliant on a part, the focus of the transaction is the part. Unless the parts and labor are separately stated, the entire amount is taxable. 32 V.S.A. 9701(4). Installation fees are charged to customers for installing the system. A [Taxpayer] service technician travels to the customer's office and installs the system. Supplies and parts are used during the installation which are incidental (generally less than 5% of the installation fee) but not separately stated.

In installation, the customer's intent is to purchase the expertise and labor to install the system and the transaction is the sale of professional services. Tangible personal property, such as parts and supplies, may be transferred in a service sale provided no separate charge is made for the tangible personal property and the value is essentially an inconsequential element in relation to the value of the service transaction. 32 V.S.A. 9701(6). As a general rule, the tangible personal property value should not exceed 10% of the charge. [Taxpayer] would not collect sales tax from the customer; however, [Taxpayer] is responsible for reporting and remitting use tax on the parts or supplies

used in Vermont installation. The tax basis for use tax is [Taxpayer's] purchase price. 32 V.S.A. 9773 & 9774.

Shipping charges are invoiced by [Taxpayer] to their customers for any items shipped to the customers. These charges are separately stated on the invoice.

Shipping charges are exempt as long as all of the following criteria set forth in 32 V.S.A. 9701(4) are met: 1) shipment is directly to the customer; 2) shipment charges are separately stated; 3) transportation is by means of common carrier, contract carrier or U.S. mails.

Relocate and reinstall equipment charges are to remove the system and place on new equipment. For example, the customer buys a new photocopier. [Taxpayer] removes its tracking system from the old photocopier and installs it on the new photocopier. The one charge includes labor as well as supplies and parts used during the reinstallation. The supplies and parts are incidental and generally less than 5% of the cost.

See discussion on Installation fee for tax consequences.

Training charges are made when [Taxpayer] trains the customer's employees on the proper use of the system. Vermont sales and use tax is on the sale of tangible personal property. Training is a service and not subject to tax.

Lease Buy Out payment occurs when a customer decides to terminate early an operating lease for the system. [Taxpayer] requires a buy out amount equal to 80% of the remaining lease payments. This payment does not entitle the customer to ownership of the property, but is a fee charged to terminate the lease.

Leasing of property is considered a sale and the receipts from that sale subject to sales and use tax. 32 V.S.A. 9701(6). The lease buy out payment is a receipt from rental of tangible personal property and sales tax is due. In effect, [Taxpayer] has agreed to accept less than it is legally entitled to receive under the original lease agreement and is part of the consideration paid under the lease.

Configuration change requires the customer to pay a fee for altering the software of the system. For example, a customer wishes to add a report. A [Taxpayer] employee makes the software modification and the software is reinstalled in the customer's system. The configuration fee is for a service which is not subject to sales and use tax.

Cabling charges are for sale and installation of cabling (wiring) for the customer. The one charge includes the cost of the materials and the labor involved for installation of the cable. The focus of this transaction is the purchase of the cabling and subject to sales and use tax. 32 V.S.A. 9701(6). In essence, this is the sale of tangible personal property that comes installed. Unless the labor is separately stated, the entire charge is subject to tax. 32 V.S.A. 9701(4).

Data recovery charges cover the services of a service technician to recover data from a failed computer hard drive disk. The customer ships the hard drive disk to [Taxpayer] or is picked up at the customer's site by a [Taxpayer] service technician. Incidental

supplies and parts which are generally less than 5% of the charge may be used in data recovery.

See Installation fee for discussion of tax consequences.

Cost per copy represents the amount a customer pays [Taxpayer] for the use of the equipment. This is a flat rate times the number of photocopies made during the period. The rental, lease, or license to use tangible personal property is considered a sale. 32 V.S.A. 9701(6). The cost per copy provides the basis for [Taxpayer] to charge for the rental or license to use the hardware and software in its system. This is a receipt from the sale of property and subject to sales and use tax. 32 V.S.A. 9701(4).

I note from your descriptions of the various sales made in Vermont that [Taxpayer] employees may be performing work in Vermont. When work is done here, the portion of the employee's wage attributable to Vermont work should have Vermont income tax withheld, and the employee needs to file a Vermont personal income tax return. Enclosed is an application to receive a Vermont business account for withholding. Please call the Taxpayer Service Division at (802) 828-2551 if you have questions on withholding.

This ruling is issued solely to your business 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.