Ruling 96-04

Vermont Department of Taxes

Date: February 16, 1996

Written By: Gloria Hobson, Business Taxes Policy Analyst

Approved By: Edward W. Haase, Commissioner of Taxes

You requested a formal ruling on whether or not you are obligated to collect Vermont sales tax during your fund raisers. This advice is based solely on the facts contained in your letter of December 22, 1995.

Issues: Is the [Corporation] responsible for collecting and remitting Vermont sales tax under the provisions of 32 V.S.A. Section 9743(3)(C)?

Is the exchange of an [item] for a certain dollar amount contribution a sale of tangible personal property subject to Vermont sales tax?

Facts: The [Corporation] holds 501(c)(3) exempt organization status from the Internal Revenue Service. The [Corporation] holds an annual fund raiser at locations in stores and other businesses. The [Corporation] sets up displays to provide information to the public on cancer prevention, research, and the types of services the [Corporation] provides to Vermont cancer patients and their families. For $5.00, one will receive educational materials and an [item].

Ruling: The [Corporation] is obligated to collect and remit Vermont sales tax on current year sales of tangible personal property when sales of such items exceeds $5,000 in the prior year.

The exchange of [items] for a certain dollar donation is considered a retail sale and subject to Vermont's sales tax.

Vermont imposes the sales tax on the sale of tangible personal property at retail. 32 V.S.A. Section 9771(1). A retail sale is any sale to any person for any purpose by transfer of title, possession, exchange, barter, rental, lease or license to use the property. 32 V.S.A. Sections 9701(5) and (6).

The [Corporation] indicates it supplies a thank you gift of [items] for a certain dollar donation. The [Corporation] contends that those giving money are doing so purely as a donation to the [Corporation]. A donation is the act of making a gift, specially to a charity, and a gift is something voluntarily transferred by one person to another without compensation. See Webster's Seventh New Collegiate Dictionary (1967). The [item] is supplied only upon receipt by the [Corporation] of a minimum dollar amount and the public expects to receive the [item] in exchange for the specific donation amount. This exchange of a certain dollar amount for an [item] is a sale.

A 501(c)(3) organization is required under 32 V.S.A. Section 9743(3)(C) to collect the sales tax if its sales of tangible personal property exceeds $5,000 in the prior year. When the prior year's sales of [item] exceed $5,000, then the [Corporation] must collect the sales tax from its customers on the current year's sales. Basically, the customer would pay the [Corporation] $5 plus $.25 tax for the [item]. You may apply to the Commissioner for waiver of the requirement to charge the tax to the customer separately and sell the [item] as tax included if the [Corporation] can show this requirement would be impractical or a hardship. 32 V.S.A. Section 9708(b).

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.