

Ruling 96-06

Vermont Department of Taxes

Date: March 14, 1996

Written By: Gloria Hobson, Business Taxes Policy Analyst

Approved By: Edward W. Haase, Commissioner of Taxes

You requested formal ruling on the Vermont sales and use tax obligation of [Taxpayer] on their sales of tangible personal property and charges for a toll road. This ruling is based on the information in your letter dated September 27, 1995 which was faxed to me on December 22, 1995.

Issues:

Is the [Taxpayer] exempt from collection of Vermont sales tax on sales of tangible personal property under 32 V.S.A. Section 9743(3)?

Are the charges for use of a toll road an amusement charge and exempt from Vermont sales tax under than 32 V.S.A. Section 9743(3)?

Facts: The [Taxpayer] holds 501(c)(3) exempt organization status from the Internal Revenue Service. The [Taxpayer] operates a toll road that goes to the summit of [location]. The toll road is open for public use for a fee. The [Taxpayer] is solely responsible for all aspects of the toll road maintenance, operation and accounting. No other person or organization shares in the gains or losses of the toll road. At the summit, the [Taxpayer] also operates a gift shop selling postcards and information on the [organization]. The annual sales at the gift shop are less than \$5,000. The gross revenues for the toll road exceed \$5,000 per year.

Ruling: The sales of tangible personal property from the summit gift shop are exempt from Vermont sales tax under 32 V.S.A. Section 9743(3)(C).

The toll road charges are an amusement charge and exempt from Vermont sales tax under 32 V.S.A. Section 9743(B).

The provisions of 32 V.S.A. Section 9743(C) exempt 501(c)(3) organizations from collection of sales tax on taxable items when their gross sales of tangible personal property or services do not exceed \$5,000 in the prior year. The \$5,000 limit is exclusive of amusement charges by the organization, and includes all sales of taxable and nontaxable tangible personal property or services. The organization must qualify for the exemption each year based on the prior year's sales.

Charges for use of a toll road meet the definition of an amusement. The predominant purpose of the road is to reach a scenic vista which holds a nature exhibition and

recreation for the user. See 32 V.S.A. Section 9701(10) and Regulation 226-9. Amusement charges are taxable under 32 V.S.A. Section 9771(4). However, amusement charges by a 501(c)(3) organization are exempt from sales tax when the following conditions are met: 1) the 501(c)(3) organization bears the entire risk of loss; 2) no other person shares in the profit of the operation; 3) no other person is a party to any contracts with performers in a production; 4) the 501(c)(3) organization is solely responsible for the collection of all receipts and payment of all expenses associated with the operation and accounts for the receipts and expenses on its books and records. See 32 V.S.A. Section 9743(3)(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.