

Ruling 96-09

Vermont Department of Taxes

Date: April 18, 1996

Written By: Gloria Hobson, Business Taxes Policy Analyst

Approved By: Edward W. Haase, Commissioner of Taxes

You requested a formal ruling on whether the products provided by [Taxpayer] to its hotel customers in this state are subject to Vermont's sales and use. The advice is based on the facts contained in your letter dated December 4, 1996, which was faxed to me on April 10, 1996, and my telephone conversation with [Taxpayer] on April 11, 1996.

Issues: Are pay per view movie videos, satellite or cable television programming, and pay per use video games provided to hotel guests through [Taxpayer's] systems subject to Vermont's sales and use tax?

If the products are taxable, is the hotel or [Taxpayer] responsible for collecting, reporting and remitting tax as required by 32 V.S.A. § 9775?

Facts: [Taxpayer] movie videos, cable or satellite television and video games systems to hotels for use by the hotel guests.

The movie videos are shown on the television sets in the hotel rooms and the guest pays a fee to view the movie. [Taxpayer] sets up a pay-per-view system (PPV system) in the hotel. The PPV system is a central control unit linked by wire to the television sets in each hotel room. The control unit contains a rack of movie videos, a computer and other electronic equipment. The hotel provides the space for the PPV system. [Taxpayer] owns and controls the system and does the installation and any maintenance. Hotel guests select a movie video from a listing shown on their television screen. Upon pressing the movie video's identification number on the television remote control, the PPV system electronically selects the movie video which is transmitted by wire to the guest's hotel room television. Small hotels may use a PPV system that accesses the movie videos through a telephone PBX system. The hotel charges a specified amount on the guest's hotel bill for each movie video viewed based on information in the PPV daily monitoring system. The hotel retains a percentage of the charge and remits the remainder to [Taxpayer] monthly.

Some hotels elect to provide cable or satellite television programming to their guests at no additional charge to the guest. The hotel purchases the cable or satellite television programming from [Taxpayer]. The hotel pays [Taxpayer] a specified rate per room each month for the cable or satellite programming.

[Taxpayer] also provides video games for hotel guests. The games are accessed on a system similar to the pay-per-view system for video movies. The hotel charges a specified amount on the guest's hotel bill for each video game played as shown on the daily monitoring system. The hotel retains a percentage of the charge and remits the remainder to [Taxpayer] monthly.

Ruling: The charges on hotel guests' bills for the pay-per-view movie videos and video games are amusement charges and are subject to Vermont sales and use tax. The hotel reports and remits the tax due on movie videos and video games as the agent of [Taxpayer]. However, [Taxpayer] is still the taxpayer ultimately liable for the tax. The tax is collected on the charge made to the hotel guest.

The charge to the hotel for cable or satellite television programming is an amusement charge and subject to Vermont sales and use tax. [Taxpayer] is responsible for reporting and remitting the tax on charges to the hotel for cable or satellite television programming.

The pay-per-view charge for movie videos, pay-per-play charge for video games, and charges for cable or satellite television are amusement charges and subject to Vermont sales and use tax. Amusement charges as defined in 32 V.S.A. § 9701(10) specifies the charges for cable television systems or other audio or video programming systems that operate by wire, coaxial cable, lightwave, microwave, satellite transmission or other similar means are taxable.

A person required to collect tax includes every seller of taxable tangible personal property or services and every recipient of amusement charges. 32 V.S.A. § 9701(14). A person required to collect tax is personally liable for the tax imposed, collected or required to be collected. The person required to collect tax have the obligation and authority to collect the tax due as if the tax were part of the purchase price of the property or amusement. 32 V.S.A. § 9703. For administrative efficiency, an agent of the person required to collect the tax may be treated as jointly responsible for the collection and payment of the tax. 32 V.S.A. § 9704. In the cases of the video movies and video games, [Taxpayer] sells the property but the hotel acts as [Taxpayer's] agent to bill and collect the sales price and tax. The hotel receives a percentage of these funds as compensation and the balance is forwarded to [Taxpayer]. Since the hotel is responsible for the billing, collection and accounting of the movie video and video game sales, the hotel is in a fiscally responsible position to report and remit the sales tax. However, the agent relationship does not relieve the [Taxpayer] from its personal liability for the tax. The tax on movie video and video game rentals is based on the charge made to the hotel guest.

The cable and satellite television programming is sold by [Taxpayer]. The hotel does not act as [Taxpayer's] agent in this transaction and pays the charge directly to [Taxpayer]. Thus, [Taxpayer] is responsible for collecting the sales tax from the hotel and remitting to the Vermont Department of Taxes. The tax on the sale of cable and satellite television programming is based on the charge made by [Taxpayer] to the hotel.

Persons required to collect the tax must register and receive a certificate of authority to conduct business in Vermont before making any sales in this state. 32 V.S.A. § 9707(a). The hotel will need to receive a sale tax certificate of authority to make sales of video movies and video games and to collect and to remit the tax as [Taxpayer's] agent. [Taxpayer] needs to receive a sales tax certificate of authority to make sales of the cable or satellite television programming and to collect and to remit the tax.

Miscellaneous: [Taxpayer] may have Vermont corporate income tax liability or an obligation to withhold Vermont personal income tax. Without further information, these tax obligations cannot be ruled on. However, it appears [Taxpayer] has income producing property located in this state and may have personnel performing services in the state to install and maintain the video systems in Vermont hotels.

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.