



State of Vermont
Department of Taxes
133 State Street
Montpelier, VT 05633-1401

Agency of Administration

[Date]

[Address]

Re: Formal Ruling 19-04

Dear [Deleted]:

This is a formal ruling for [Taxpayer], regarding the applicability of sales tax to charges for subscriptions to its pre-recorded audio fitness instruction. This ruling is based upon representations in your letter dated [Date], and the enclosed materials.

FACTS

[Taxpayer], sells subscriptions for its computer software programs of audio-only fitness classes. For a subscription fee, the customer may stream or download pre-recorded instructors giving fitness instructions set to music. Taxpayer licenses the music from other content providers and does not charge Taxpayer's subscribers separately for the music.

DISCUSSION

Vermont imposes sales tax on retail sales charges for various items, including, "audio or video programming" and "specified digital products," both of which would apply to your subscription charges. 32 V.S.A. § 9771(1), (4), (8).

Sales tax on audio or video programming applies to charges for "access to cable television systems or other audio or video programming systems that operate by wire, coaxial cable,



lightwave, microwave, satellite transmission, or by other similar means.” 32 V.S.A. § 9771(4).

Your subscription charges for computer or wireless access to your audio programming will be subject to sales tax under this section.¹

Alternatively, your charges would be subject to the sales tax on “specified digital products”:

§ 9771. Imposition of sales tax

Except as otherwise provided in this chapter, there is imposed a tax on retail sales in this State. The tax shall be paid at the rate of six percent of the sales price charged for but in no case shall any one transaction be taxed under more than one of the following:

* * *

(8) specified digital products transferred electronically to an end user regardless of whether for permanent use or less than permanent use and regardless of whether or not conditioned upon continued payment from the purchaser.

32 V.S.A. § 9771(8). “Specified digital products” are “digital audio-visual works, digital audio works, digital books, or ringtones that are transferred electronically.” 32 V.S.A. § 9701(46).

“Transferred electronically” means “obtained by the purchaser by means other than tangible storage media.” 32 V.S.A. § 9701(45). “End user” means:

. . . any person other than a person who received by contract a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person or persons.

32 V.S.A. § 9701(47). Since your customers will be end users who purchase for their own use and not for rebroadcast, and who purchase digital audio works obtained by means other than tangible storage media, you will be selling specified digital products, subject to sales tax.

Charges for access to programming systems and charges for specified digital products are both sourced to the customer’s residential street address. Vermont Department of Taxes, Sales

¹ Note that sales tax also applies to “admission to places of entertainment,” which include “places where any facilities for . . . sports are provided.” 32 V.S.A. § 9773(4), 9701(11). The regulations under this section provide that sports instruction by itself is not subject to sales tax as “entertainment.” Vermont Department of Taxes Sales and Use Tax Regulations (Eff. Jan 1, 2019) § 1.9771(4)-1.E.1.

and Use Tax Regulations (Effective date: January 1, 2019), § 1.9701(8) -8, -9. For your customers residing in Vermont, their subscription charges will be subject to Vermont sales tax.

GENERAL PROVISIONS

Issuance of this ruling is conditioned upon the understanding that neither the taxpayer nor a related taxpayer is currently under audit or involved in an administrative appeal or litigation concerning the subject matters of the ruling. This ruling is issued solely to the taxpayer and is limited to the facts presented, as affected by current statutes and regulations.

Other taxpayers may refer to this ruling, when redacted to protect confidentiality, to see 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 statutes or regulations.

This ruling will be made public after deletion of the taxpayer's name and any information which may identify the taxpayer. A copy of this ruling showing the proposed deletions is attached, and you may request within 30 days that the Commissioner delete any further information that might identify the taxpayer. The final discretion as to deletions rests with the Commissioner.

You have the right to appeal this ruling within 30 days. 3 V.S.A. §§ 808, 815.

Emily Bergquist

Date

Approved:

Commissioner signed the original ruling on March 11, 2019.

Kaj Samsom
Commissioner of Taxes

Date