

Ruling 2004-06

Vermont Department of Taxes

Dated: June 25, 2004

Written By: Judith Henkin, Attorney for the Department

Approved By: Tom Pelham, Commissioner of Taxes

You have requested a ruling on behalf of your business, a CPA firm representing many internet start-up companies located in the <Area> California. The companies you represent provide online bill pay services to their customers. This ruling is based on the facts contained in your letter of April 8, 2004.

According to your letter, your clients provide their customers with the ability to make bill payments to vendors or suppliers online, using a third party provider contracted by your clients. The third party internet server may be located within or outside of Vermont. Customers may make one-time payments or schedule recurring payments that are automatically sent electronically or by check to payees throughout the United States. Payment history or data is permanently stored online on the third party website. Customers may view their payment history using custom report options online or can download the data into a prepackaged bookkeeping software program located on the customers' personal computers. Your clients charge their customers a flat monthly fee for the service, a per transaction fee, or a combination of monthly plus a transaction fee. Customers are not charged for utilizing the custom report option online, printing a back-up copy of the report, or downloading the data into their own bookkeeping programs.

You ask whether the charges for accessing an in-state or an out-of-state internet website to utilize the bill pay service is subject to sales and use tax, given that the sellers have nexus with Vermont and their customers reside in the state.

Vermont sales tax is imposed upon the receipts from the sale of tangible personal property sold at retail in the state. 32 V.S.A. § 9771(1).^{*} The compensating use tax applies to any use of tangible personal property purchased at retail in this state, and not subject to the state sales tax. 32 V.S.A. § 9773(1). Under Vermont law, when the right to use your clients' products is transferred to a customer, a "sale" occurs. See 32 V.S.A. § 9701(6) (sale means "any transfer of title or possession or both, exchange or barter, rental lease or license to use or consume"). The relevant inquiry in determining

^{*} Additionally, Chapter 233 of Title 32 imposes sale tax on certain public utility services, 32 V.S.A. § 9771(2); charges for producing tangible personal property for consideration for consumers furnishing the materials for production, *Id.* § 9771(3); amusement charges, *Id.* § 9771(4); the retail sale of telecommunications service provided to a Vermont service address, *Id.* § 9771(5); prepaid phone cards and related items, *Id.* § 9771(6); and the sale of tangible personal property to an advertising agency for use in providing or creating advertising materials for transfer in conjunction with the delivery of services. *Id.* § 9771(7).

the transaction's taxability, therefore, is whether or not your clients' products constitute tangible personal property.

Tangible personal property is specifically defined as

personal property which may be seen weighed, measured, felt, touched or in any other manner perceived by the senses and shall include fuel and electricity, but shall not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership.

32 V.S.A. § 9701(7).

The online bill pay service you have described does not constitute tangible personal property under Vermont law. Customers purchase only the intangible access to a service, rather than a corporeal object such as a computer program delivered in its physical form (i.e. a magnetic tape or disc). See *Chittenden Trust Co. v. King*, 465 A.2d 1100, 143 Vt. 271 (1983) (computer software tape purchased by bank akin to tangible personal property such as films, cassettes and books, and is subject to tax). The customers' ability to pay their bills online is not property which can be weighed, measured and touched, and therefore does not constitute tangible personal property subject to the Vermont sales and use tax. The fact that customers may electronically download data from the internet site does not change this result; customers are purchasing a non-taxable service from your clients, not the printed or back-up copies of their payment history.

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.

Section 808 of Title 3 provides that this ruling will have the same status as an agency decision or an order in a contested case. You have the right to appeal this ruling within thirty days.