Ruling 94-07

Vermont Department of Taxes

Date: October 31, 1994

Written By: Danforth Cardozo, III, Attorney for the Department

Approved By: Betsy Anderson, Commissioner of Taxes

Your letter of January 18, 1992, and our subsequent telephone conversations are being treated by the Department as a request for a formal ruling on the application of Vermont's sales and use tax law and regulations to the activities of Vermont antiques dealers. With regard to sales by Vermont antiques dealers of tangible personal property for resale, your letter states that it is or will be the practice of antiques dealers not to collect sales tax upon presentation to the dealer of a Vermont resale certificate by the purchaser issued pursuant to 32 V.S.A. § 9745. In the case of a sale to a person from another State who, by reason of being a non-resident of Vermont and not doing business in Vermont, has no Vermont certificate of authority or resale certificate, no sales tax will be collected only where the dealer obtains sufficient evidence to enable it to sustain its burden of proving the sale is actually for resale. If the purchaser cannot furnish such evidence, the vendor, to protect him or herself, should collect the sales tax. Reg. § 226-6.

The procedure you have suggested is correct. Under both the statute and regulations, a certificate from the purchaser is required in all sales for resale. With regard to purchasers from another state without a Vermont certificate of authority and Vermont resale certificate, the dealer should obtain sufficient evidence that the purchaser intends to purchase for resale. Examples of sufficient evidence include, but are not limited to, any one or more of the following: a Vermont exemption certificate form S-3 indicating the information requested on the form and the purchaser's home state exemption certificate number (if applicable); a foreign resale certificate provided by the purchaser similar in form and content to the Vermont resale certificate (or a written statement signed by the purchaser containing equivalent information); or enough information in the form of a certificate or statement provided and signed by the purchaser and bearing the purchaser's address, and registration certificate number (if applicable) so that the vendor can reasonably infer that the purchaser is in the business of reselling property of the type being purchased. In addition to the required statement or certificate, a vendor could also reasonably rely on such things as the vendor's personal knowledge concerning the business activities of the purchaser, or business cards, letterheads, or other indications of a business.

The burden is on the vendor to prove a sale is actually for resale. It is to the vendor's benefit to obtain from the purchaser as much evidence as possible that a sale is actually for resale. If the vendor has any doubts whether the purchaser truly intends to purchase

the property for resale because of the purchaser's failure to provide sufficient (or any) evidence, the vendor, to protect him or herself, should collect the sales tax. For example, an unverifiable foreign certificate number without other independent evidence that a purchaser is engaged in selling the kind of merchandise sold by the vendor may be insufficient.

Any certificate and other information must be taken in good faith by the vendor from the purchaser, and must be gathered at the time of the sale. The good faith of the vendor would be questioned if the vendor has knowledge of facts which give rise to a reasonable inference that the purchaser does not intend to resell the property; for instance, knowledge that the purchaser is not engaged in the business of selling the kind of merchandise sold by the vendor.

You also raise the issue of the treatment of collection of sales tax in so called "multi dealer" or "group shop" operations. These operations typically display antiques for sale by several dealers in one space or showroom. The Department understands that in this type of operation, a dealer rents space from a landlord (the landlord may also be a dealer). Sometimes, the landlord takes goods from a dealer on consignment. Sales of goods are conducted by one person or dealer on site (often from a central location and single cash register); sales are conducted both on that person's or dealer's behalf and on behalf of other dealers displaying items for sale. You state that while many operations remit tax directly to the state, many do not, choosing instead to remit to the dealer-lessee for later submission to the state. Your letter indicates a belief that it is appropriate for such operations to remit the sales and use tax collected directly to the state.

Under Vermont law, "Sale, selling or purchase: means any transfer of title or possession or both, exchange or barter...in any manner or by any means whatsoever for a consideration, or any agreement therefor...." 32 V.S.A. § 9701(6). A "vendor" is defined as including "a person making sales of tangible personal property, the receipts from which are taxed..." by the sales and use tax law. 32 V.S.A. § 9701(9)(A). "Every person required to collect any tax imposed by (the sales and use tax law) shall be personally liable for the tax imposed, collected or required to be collected under (the sales and use tax law)." 32 V.S.A. § 9703. And, "persons required to collect tax or persons required to collect any tax imposed by (the sales and use tax law): include every vendor of taxable tangible personal property...." 32 V.S.A. § 9701(14). A person required to collect or pay the tax is required to file a return and pay the tax over to the commissioner of taxes. 32 V.S.A. §§ 9775, 9776. When necessary for the efficient administration of the sales and use tax law, the commissioner may, in her discretion, hold an agent as a vendor jointly responsible with a principal for the collection and payment of the tax. 32 V.S.A. § 9704.

Therefore, in accordance with the above statutes, the belief as stated in your letter is correct. A dealer conducting a sale either on his or her own behalf or on behalf of another as part of a multi-dealer or group shop operation as you describe is a vendor required to collect the tax, and as such, is responsible for remitting the tax to the commissioner. The fact that the seller conducting the sale in such an operation may be selling some other dealer's goods does not change the result, since in either case the seller is acting as a vendor who is transferring title or possession or both of items of

tangible taxable personal property. 32 V.S.A. §§ 9701(6), (9)(A), (14) and 9703. In the case of a dealer conducting a sale on another dealer's behalf, the dealer conducting the sale could also be considered as the agent of the principal and be held jointly responsible for the collection and payment of the tax. 32 V.S.A. §§ 9703, 9704, 9775, 9776.

The Department also understands there are circumstances where several dealers rent space or congregate at one location for a show where each dealer or his or her agent is present and making sales on his or her own behalf. These shows are usually held only on an occasional basis, or perhaps as an annual show or event. In such a case, each dealer or his or her agent is responsible for collecting and remitting the sales tax. Department of Taxes Formal Rulings 83-7 and 84-18 are superseded to the extent they are inconsistent with this Formal Ruling.

This ruling is issued solely to your firm 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.