

Rulings of the Tax Commissioner

Document Number: 06-103

Tax Type: Retail Sales and Use Tax

Brief Description: Collection with respect to sales of the scanning services and related software

Topics: Collection of Tax

Date Issued: 10/05/2006

October 5, 2006

Re: Request for Ruling: Retail Sales and Use Tax

Dear *****:

This will reply to your letter in which you request a ruling on the application of Virginia Retail Sales and Use Tax to the business activities of your firm, ***** (the "Taxpayer"). I apologize for the delay in responding to your letter.

FACTS

The Taxpayer is a business process software company that specializes in the sale of accounting software to customers located inside and outside Virginia. The Taxpayer delivers its software products to customers over the Internet. The software is hosted on the Taxpayer's servers or on customers' servers.

The Taxpayer is now offering customers a document scanning, storage and retrieval service that can be used with the Taxpayer's accounting software. The Taxpayer has partnered with two unrelated companies to provide the document scanning, storage and retrieval services. One company will scan and image paper copies of documents that are then indexed and routed to the Taxpayer's system. The second company will provide scanning and indexing software that is embedded in the Taxpayer's software and allows customers to scan their own documents, key and edit information related to those documents on their personal computers and then upload the data to the Taxpayer's accounting system.

The Taxpayer seeks a ruling on its sales tax collection responsibilities with respect to sales of the scanning services and related software.

RULING

Document Scanning Services

Virginia Code § 58.1-609.5 1 provides an exemption from the retail sales and use tax for:

Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made . . . and services not involving an exchange of tangible personal property which provide access to or use of . . . the Internet and any other related electronic communication service, including software, data, content and other information services delivered electronically via the Internet.

The Department has traditionally treated scanning services as a nontaxable service if the data is transferred electronically to the customer. Scanning and imaging services that include the transfer of scanned information to the customer on a diskette or other tangible medium is a taxable retail sale. See Public Document (P.D.) 01-218 (12/19/01), which discusses a taxpayer that provided corporate history and archival services to businesses. The taxpayer purchased scanning and image editing services from third party vendors that provided the scanned and imaged information to the taxpayer via computer diskettes. The Department ruled that the transaction was subject to sales and use tax based on the tangible personal property (the diskettes) exchanged as part of the transaction.

Based on the information provided in your letter and over the telephone, the Taxpayer's customers access and use the scanned data over the Internet. There is no transfer to customers of tangible personal property containing the scanned information. Based on the exemption provided in *Va. Code* § 58.1-609.5 1, the transaction is not taxable; therefore, the Taxpayer is not required to charge and remit Virginia sales tax on the charges billed to customers for the service. If, however, the Taxpayer provides the scanned information to customers on a tangible medium, such as a computer diskette, CD or DVD, the total charge for the Taxpayer's service is subject to the Virginia sales and use tax. See *Va. Code* § 58.1-602, definition of "sales price."

Software Sales

The Taxpayer indicates that the scanning and imaging software is delivered to customers over the Internet. If this is the case, the sale of the software is not subject to Virginia sales and use tax. This position is consistent with the exemption provided in *Va. Code* § 58.1-609.5 1 and prior rulings of the Department that distinguish between information provided electronically and in tangible form. See P.D. 91-224 (09/23/91) and P.D. 95-68 (03/30/95).

Software Training

The Taxpayer may provide software training to customers under separate contracts. The Department's policy with respect to training services is well established. Training services included with the sale of software are generally taxable if the sale of the software is taxable. Training services provided under contracts that are separate from

the sale of taxable software are exempt from the tax. The Department has issued numerous public documents that address this issue including P.D. 94-251 (8/12/94), P.D. 96-88 (05/14/96), P.D. 96-348 (11/25/96) and P.D. 03-31 (04/09/03).

Location Where Contract Signed

The Taxpayer inquires if the location where contracts are signed affects the taxation of transactions with its customers. *Virginia Code* § 58.1-603 imposes the Virginia retail sales tax on "every person who engages in the business of selling at retail or distributing tangible personal property *in this Commonwealth . . .*" [Emphasis added.] *Virginia Code* § 58.1-602 defines "sale" as:

any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and any rendition of a taxable service for a consideration

The location where a contract is signed does not control the taxation of retail sales transactions. Rather, the location of the transaction itself is the controlling factor. If the transaction is a "retail sale," as the term is defined in *Va. Code* § 58.1-602, and title or possession of tangible personal property is transferred to the customer in Virginia, the transaction is subject to Virginia sales tax. The same is true if taxable services are provided to customers in Virginia.

Dealer Registration Requirements

Title 23 VAC 10-210-460 discusses the criteria that the Department uses to determine if businesses must register for the collection of Virginia's retail sales and use tax. Subsection C defines "dealer" to include a person who sells or offers for sale at retail, tangible personal property. Based on the information in the Taxpayer's letter, the software and scanning services are sold and transferred to customers electronically. For this reason, the Taxpayer is not required to collect and remit sales tax to the Department on the charges billed for these services. If the Taxpayer begins delivering software or scanned information to customers by tangible mediums such as diskettes or CDs, the Taxpayer will be required to register for the collection of Virginia sales tax on those sales.

As a service provider, the Taxpayer is considered the user or consumer of materials, equipment and other tangible personal property purchased for use in providing its services. Virginia sales or use tax should be paid on purchases made for use in providing these services. Title 23 VAC 10-210-4040 E discusses the tax responsibilities of service providers.

The responses in this letter are based on the facts presented in your letter and over the telephone as summarized above. Any changes in facts or the introduction of new facts may lead to a different result.

The *Code of Virginia* sections, regulations and public documents cited are available on-line at www.tax.virginia.gov in the Tax Policy Library section of the Department's web site. If you have any questions concerning this ruling, please contact ***** in the Department's Office of Policy and Administration, Appeals and Rulings, at *****.

Sincerely,

Janie E. Bowen
Tax Commissioner

AR/52509S
