

VERMONT SALES AND USE TAX REGULATIONS

(Effective date: ~~November 1, 2010~~, 2018)

TABLE OF CONTENTS

REG. SEC. 1.9701 GENERAL PROVISIONS..... 1

§ 1.9701(4)-1 Sales Price..... 1

 § 1.9701(4)-2 Exclusions from Sales Price..... 1

 § 1.9701(4)-3 Bundled Transaction..... 2

§ 1.9701(5)-1 Retail Sale..... 4

 § 1.9701(5)-2 Lease or Rental..... 5

 § 1.9701(5)-3 Drop Shipment..... 6

§ 1.9701(7)-1 Tangible Personal Property.....6

 § 1.9701(7)-2 Prewritten Computer Software.....7

§ 1.9701(8)-1 Sales Sourced to Vermont..... 8

 § 1.9701(8)-2 General Sourcing Definitions..... 8

 § 1.9701(8)-3 General Sourcing Rules..... 8

 § 1.9701(8)-4 Direct Mail Sourcing..... 10

 § 1.9701(8)-5 Telecommunication Sourcing Definitions..... 12

 § 1.9701(8)-6 Telecommunication Sourcing Rule..... 14

 § 1.9701(8)-7 Admission to Places of Amusement Sourcing Rule..... 15

 § 1.9701(8)-8 Access to Programming Sourcing Rule.....15

 § 1.9701(8)-9 Specified Digital Products Sourcing Rule15

§ 1.9701(19) Telecommunications Service..... 15

§ 1.9701(42) Ancillary Services..... 15

§ 1.9701(45) Transferred Electronically.....16

§ 1.9701(47) End User..... 16

§ 1.9707-1 Registration of Sellers..... 16

 § 1.9707-2 Registration of Businesses Other than Sellers..... 19

 § 1.9707-3 Streamlined Sales Tax Agreement Confidentiality and Privacy
 Protections for Model 1 Sellers..... 19

§ 1.9709-1 Records to be Kept; General Requirements.....20

 § 1.9709-2 Electronic Records.....21

 § 1.9709-3 Alternative Storage Media..... 22

 § 1.9709-4 Records Retention – Time Period.....22

REG. SEC. 1.9741 EXEMPTIONS.....	23
§ 1.9741 In General.....	23
§ 1.9741(2) Medical Exemption.....	23
§ 1.9741(3)-1 Agricultural Supplies Exemption.....	25
§ 1.9741(3)-2 Examples.....	26
§ 1.9741(4)-1 Casual Sales.....	26
§ 1.9741(4)-2 Scope of Exemption.....	27
§ 1.9741(4)-3 Examples.....	27
§ 1.9741(12) Motor Vehicles.....	28
§ 1.9741(13) Food and Beverages.....	28
§ 1.9741(14)-1 Manufacturing Exemption.....	29
§ 1.9741(14)-2 Definitions.....	29
§ 1.9741(14)-3 Manufacturing Supplies Exemption.....	31
§ 1.9741(14)-4 Equipment, Machinery or Parts Used Directly and Exclusively in Manufacturing	32
§ 1.9741(14)-5 Managerial, Sales or Nonoperational Activities.....	34
§ 1.9741(14)-6 Space Heating, Cooling, Ventilation and Illumination.....	35
§ 1.9741(14)-7 Pre-production Activities.....	35
§ 1.9741(14)-8 Post-production Activities.....	35
§ 1.9741(14)-9 Monitoring Machinery and Equipment.....	35
§ 1.9741(14)-10 Purchase by Contractors.....	35
§ 1.9741(14)-11 Exemption Certificate.....	36
§ 1.9741(15) Newspaper Exemption.....	36
§ 1.9741(16)-1 Packaging Exemption.....	37
§ 1.9741(16)-2 Definition of Packing, Packaging or Shipping Materials.	37
§ 1.9741(16)-3 Definition of Manufacturer.....	37
§ 1.9741(16)-4 Definition of Distributor	37
§ 1.9741(16)-5 Equipment	37
§ 1.9741(16)-6 Sales to Persons Rendering a Service	37
§ 1.9741(16)-7 Sales to Retail Stores	38
§ 1.9741(16)-8 Sales to Restaurants	38
§ 1.9741(16)-9 Exemption Certificate	38
§ 1.9741(24)-1 Research or Development Exemption	38
§ 1.9741(24)-2 Definitions	38
§ 1.9741(24)-3 Presumption of Exemption	39

§ 1.9741(25)-1	Agricultural Machinery and Equipment Exemption	39
§ 1.9741(25)-2	Definitions	40
§ 1.9741(25)-3	Predominant Use.....	40
§ 1.9741(25)-4	Examples of Predominant Use	41
§ 1.9741(25)-5	Examples of Uses of Machinery and Equipment Not in Use for Production of Tangible Property for Sale.....	42
§ 1.9741(25)-6	Nurseries	43
§ 1.9741(25)-7	Agricultural Exemption Certificate	43
§ 1.9741(26)-1	Residential Fuel Exemption	43
§ 1.9741(26)-2	Definition of Residence	43
§ 1.9741(26)-3	Definition of Domestic Use	43
§ 1.9741(26)-4	Collection of Tax	44
§ 1.9741(26)-5	Presumption of Exemption	44
§ 1.9741(26)-6	Multiple Use	44
§ 1.9741(26)-7	Area Lighting	44
§ 1.9741(27)-1	Exemption for Fuels Used Directly and Exclusively for Farming Purposes...	44
§ 1.9741(27)-2	Definition of Farm	44
§ 1.9741(27)-3	Scope	45
§ 1.9741(27)-4	Collection of Tax	45
§ 1.9741(27)-5	Certificate of Exemption	45
§ 1.9741(27)-6	Multiple Use	45
§ 1.9741(34)-1	Exemption for Fuel Used Directly or Indirectly in Manufacturing	45
§ 1.9741(34)-2	Definitions	46
§ 1.9741(34)-3	Nonexempt Activities	46
§ 1.9741(34)-4	Determination of the Exempt Portion of Purchases	46
§ 1.9741(34)-5	Certificate of Exemption	46
§ 1.9741(34)-6	Example	47
§ 1.9741(51)-1	Specified Forestry Equipment and Parts.....	47
§ 1.9743	Organizations Not Covered	48
§ 1.9745-1	Certificate of Exemption	50
§ 1.9745-2	Direct Payment Permit	51
REG. SEC 1.9771	IMPOSITION, RATE AND PAYMENT	53
§ 1.9771(3)-1	Tax on Fabrication	53
§ 1.9771(3)-2	Activity That Constitutes Fabrication	54
§ 1.9771(3)-3	Test of Taxability	54
§ 1.9771(3)-4	Examples	55

§ 1.9771(4)-1 Receipts From Admissions to Place of Amusement	55
§ 1.9771(4)-2 Multiple Location Admissions	57
§ 1.9771(5)-1 Telecommunications Service	58
§ 1.9771(5)-2 Ancillary Services	59
§ 1.9771(8) Specified Digital Products Transferred Electronically	60
§ 1.9772 Amount of Tax to be Collected	60
§ 1.9773 Imposition of Compensating Use Tax	60
§ 1.9775 Returns	61
§ 1.9776 Payment of Tax	62
§ 1.9778 Collection of Compensating Use Tax	62
§ 1.9780 Bad Debt	62
§ 1.9781 Refunds	63
REG.SEC. 1.138(a)(2) LOCAL OPTION SALES TAX	64
§ 1.138(a)(2) Local Option Sales Tax	64

SALES AND USE TAX REGULATIONS

REG. SEC. 1.9701. GENERAL PROVISIONS.

Reg. § 1.9701(4) –1 Sales Price

Except as noted below, “sales price” for purposes of calculating tax means the total amount of consideration, including cash, credit, property, and services for which personal property or services are sold, leased or rented.

Where the seller receives credit, property (other than a like-kind trade-in), a service, or other nonmonetary considerations in exchange for personal property or services, the sales price includes the monetary value of such consideration. If the value of the consideration cannot be determined, it is presumed to equal the price at which the seller normally offers the product for sale.

Even where stated as a charge separate from the charge for the property or service, the sales price includes charges for labor to create the product sold, charges for services necessary to complete the sale, and delivery charges.

“Delivery charges” means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. Direct mail delivery charges that are separately stated on an invoice or similar billing document given to the purchaser are excluded from the definition of “delivery charges.” 32 V.S.A. § 9701(26).

If a shipment includes exempt property and taxable property, the seller may allocate the delivery charge by using:

1. a percentage based on the total sales prices of the taxable property compared to the sales prices of all property in shipment; or
2. a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.

If the seller elects not to allocate the delivery charge, the entire charge is subject to the tax.

Reg. § 1.9701(4) –2 Exclusions from Sales Price

The following are excluded from the sales price when they are separately stated on the invoice, bill of sale, or similar document given to the purchaser:

1. Any discounts, including cash, term, or coupons not reimbursed by a third party that are allowed by the seller and taken by the purchaser on the sale;
2. Interest, financing and carrying charges on credit extended on the sale;
3. Any tax (such as the Vermont sales tax) that is legally imposed directly on the purchaser that the seller collects and remits;

4. Charges for the installation of the property sold;
5. A credit given for trade-in of like-kind property. A trade-in of like-kind property occurs where the seller is in the business of selling such property and accepts as part of the consideration property of the buyer that serves the same function as the property sold. The fact that the property taken in trade can no longer serve the same function because it is worn, damaged, or obsolete does not disqualify the property from being a like-kind trade-in; and
6. Telecommunications nonrecurring charges.

Reg. § 1.9701(4)-3 Bundled Transaction

A bundled transaction is the retail sale of two or more products, except real property and services to real property, where (1) the products are otherwise distinct and identifiable, and (2) the products are sold for one non-itemized price. A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

Except as otherwise provided by this regulation, sales tax must be collected on the selling price of a bundled transaction if any product included in the bundled transaction would be taxable if sold separately.

A. “Distinct and identifiable products” does not include:

1. Packaging – such as containers, boxes, sacks, bags, and bottles – or other materials – such as wrapping, labels, tags, and instruction guides – that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags and express delivery envelopes and boxes.
2. A product provided free of charge with the required purchase of another product. A product is “provided free of charge” if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge.
3. Items included in the definition of “sales price.” *See* Reg. § 1.9701(4)-1.

B. The term “one non-itemized price” does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

C. A transaction that otherwise meets the definition of a bundled transaction as defined above is not a bundled transaction if it is:

1. The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service; or

2. The retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service; or
3. A transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis.
 - (a) “De minimis” means the seller’s purchase price or sales price of the taxable products is ten percent or less of the total purchase price or sales price of the bundled products.
 - (b) Sellers shall use either the purchase price or the sales price of the products to determine if the price of the taxable products is de minimis. Sellers may not use a combination of the purchase price and sales price of the products to determine if the price of the taxable products is de minimis.
 - (c) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or
4. The retail sale of exempt tangible personal property and taxable tangible personal property where:
 - (a) the single-price transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices or medical supplies; and
 - (b) where the seller’s purchase price or sales price of the taxable tangible personal property is fifty percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent determination for a transaction.

Transactions meeting the conditions outlined in subsections (C)(3) and (4) above are not taxable.

- D. In the case of a bundled transaction that includes telecommunication service, ancillary service, internet access, or audio or video programming service:
 1. If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.
 2. The provisions of this section shall apply unless otherwise provided by federal law.
- E. The seller is the user of a product transferred to a purchaser if the product is:
 1. Packaging described in subsection (A)(1);
 2. A product that is promotional in nature and/or is provided free of charge, as described in subsection (A)(2); or
 3. Property transferred with a service and not taxed pursuant to subsection (C)(1).

The seller pays sales or use tax when such property is acquired or removed from inventory unless another exemption applies.

- F. Except as indicated in subsection (E), above, the seller is not the user of a product that qualifies as de minimis under subsection (C)(3) of this section, or of a product transferred in a single-price transaction meeting the requirements of subsection (C)(4) of this section. The seller is not required to pay a sales or use tax on such transactions.
- G. If an optional computer software maintenance contract is a bundled transaction in which both taxable and nontaxable or exempt products are not separately itemized on the invoice or similar billing document, the contract shall be characterized as all taxable unless the vendor can demonstrate, using a reasonable method at the time of sale, the portion of the contract that is nontaxable or exempt products. *See* Reg. § 1.9701(7)-2(C)(3) (“Prewritten Computer Software”).
- H. Examples:
 - 1. A seller offers to its customers a package containing maple syrup, maple candy, and a ceramic pitcher. Each item has a retail price of \$10, and the package is sold for a single price of \$30. Pursuant to subsection (C)(4), the entire charge is not taxable because the value of the taxable item (the pitcher) is fifty percent or less of the total sales price and it is bundled with food items. The seller is not considered the user of the pitcher and may purchase the item tax-exempt for resale.
 - 2. A raincoat has a retail price of \$100 and umbrella a retail price of \$20. A seller offers the two items to its customers for the single price of \$120. Pursuant to subsection (C)(3), the entire charge is taxable – notwithstanding that clothing is exempt from the tax – because the products are sold for a single charge and the value of the umbrella is not de minimis because it exceeds ten percent of the total purchase price.
 - 3. A ski resort sells a ski pass valued at \$70. Each purchaser also receives a bumper sticker valued at \$2. The seller is required to collect the sales tax on the \$70 ski pass, but because the bumper sticker is promotional in nature and does not qualify as a purchase for resale, *see* subsection (A)(2), the seller is required to pay sales or use tax on the promotional item pursuant to subsection (E)(2).

See also Reg. § 1.9701(7) (“Tangible Personal Property”).

Reg. § 1.9701(5) -1 Retail Sale

The term “retail sale” means a sale for any purpose other than for resale, sublease, or subrent and is a bargained-for exchange with a price that corresponds to the bargained-for item. The term “sale” includes any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor.

Sales to contractors, subcontractors or repair persons (other than retailers or manufacturers making an election under 32 V.S.A. §9711), of materials and supplies for use by them in erecting structures or otherwise improving, altering, or repairing real property are retail sales. Once the tangible personal

property is incorporated into the real property, the sale of the real property is not subject to sales and use tax, regardless of whether the incorporated tangible personal property is itemized by the seller.

A sale of tangible personal property for use by the purchaser in performing a service is a retail sale and not a purchase for resale.

Reg. § 1.9701(5)-2 Lease or Rental

“Lease or rental” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

A purchaser of tangible personal property who purchases the property primarily for the purpose of leasing or renting the property to others is entitled to purchase such tangible personal property free of sales and use tax. The purchaser may similarly obtain repair parts for the rental or lease property free of the tax. The purchase of equipment or supplies used in conjunction with the service or care of rental property, however, is subject to tax because the materials are not considered to be purchased for resale.

A purchaser of tangible personal property not primarily intended for lease or rental must pay the sales and use tax at the time of purchase, and should not collect any tax upon the receipts from the isolated or occasional rental or lease to others. Conversely, the isolated and occasional use by the purchaser of rental or lease property is permissible without triggering payment of the sales and use tax on the purchase price of the property. For a use to qualify as “isolated and occasional,” it shall not exceed four percent of total use.

A. Lease or rental does not include:

1. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
2. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars or one percent of the total required payments; or
3. Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subsection, an operator must do more than maintain, inspect, or set-up the tangible personal property.

B. This definition shall be used for sales and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, Title 9A of the Vermont Statutes Annotated, or other provisions of federal, state or local law.

Reg. § 1.9701(5)-3 Drop Shipment

In the case of drop shipment sales, the seller (drop shipper) may claim a resale exemption based on an exemption certificate provided by its customer/reseller or any other information available to it that demonstrates to the Commissioner that the customer is purchasing for resale, regardless of whether the customer/reseller is registered to collect and remit sales and use tax in Vermont.

Reg. § 1.9701(7)-1 Tangible Personal Property

“Tangible personal property” means personal property which may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses. The statutory definition specifically includes electricity, water, gas, steam, and prewritten computer software, even if the software is delivered electronically. “Delivered electronically” means delivered to the purchaser by means other than tangible storage media.

For tax purposes, the following definitions apply:

1. “Computer” means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
2. “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
3. “Computer software” means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
4. “Load and leave” means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

A. Tangible personal property includes, but is not limited to:

1. raw materials, such as wood, metal, rubber and minerals;
2. manufactured items such as jewelry, furniture, machinery, clothing, lighting fixtures, appliances, and building materials;
3. artistic items such as sketches, paintings, photographs, moving picture films, tapes and DVDs, and recordings when on a tangible medium;
4. stamps and other philatelic items when purchased other than for use as postage; coins and other numismatic items when purchased other than for use as a medium of exchange;
5. precious metals such as bullion, ingots, and wafers.

B. Tangible personal property does not include:

1. real property;
2. items such as books, movies, or music delivered electronically (except prewritten software as provided by statute);
3. stamps when purchased for use as postage; coins and other numismatic items when purchased as a medium of exchange;
4. intangible personal property such as rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership, unless they are sold for historical display or collection purposes.
5. charges for the right to access remotely prewritten computer software provided that the software is not downloaded.

Reg. § 1.9701(7)-2 Prewritten Computer Software

A. “Prewritten computer software” means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person’s modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software.

B. A “computer software maintenance contract” is a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, support services with respect to computer software or both.

1. A “mandatory computer software maintenance contract” is a computer software maintenance contract that the customer is obligated by contract to purchase as a condition to the retail sale of computer software, and is subject to the tax.
2. An “optional computer software maintenance contract” is a computer software maintenance contract that a customer is not obligated to purchase as a condition to the retail sale of computer software.

- C. In the case of a transaction that includes an “optional computer software maintenance contract” for prewritten computer software:
1. If an optional computer software maintenance contract only obligates the vendor to provide upgrades and updates, it will be characterized as a sale of prewritten computer software, and is subject to tax.
 2. If an optional computer software maintenance contract only obligates the vendor to provide support services, it will be characterized as a sale of services and is exempt.
 3. If an optional computer software maintenance contract is a bundled transaction in which both taxable and nontaxable or exempt products that are not separately itemized on the invoice or similar billing document, the contract shall be characterized as all taxable unless the vendor can demonstrate, using a reasonable method as of the time of sale, the portion of the contract that is nontaxable or exempt products. *See* Reg. § 1.9701(4)-3 (“Bundled Transaction”).
- D. The method used by the vendor shall be binding on the purchaser.

Reg. § 1.9701(8)-1 Sales Sourced to Vermont

A sale is located “in this state” or “in the state” if it is sourced to a location in Vermont under the terms of the General Sourcing Rules, Reg. § 1.9701(8)-3.

Reg. § 1.9701(8)-2 General Sourcing Definitions

For the purpose of subsection (A) of the General Sourcing Rules, Reg. § 1.9701(8)-3, the terms “receive” and “receipt” mean:

1. taking possession of tangible personal property, or
2. making first use of services, or
3. taking possession or making first use of digital goods, whichever comes first.

The terms “receive” and “receipt” do not include possession by a shipping company on behalf of the purchaser.

Reg. § 1.9701(8)-3 General Sourcing Rules

A. The retail sale, excluding lease or rental, of a product shall be sourced as follows:

1. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

2. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee) known to the seller.
 3. When subsections (A)(1) and (A)(2) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.
 4. When subsections (A)(1), (A)(2), and (A)(3) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.
 5. When none of the previous subsections (A)(1), (A)(2), (A)(3), or (A)(4) apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold).
- B. The lease or rental of tangible personal property, other than property identified in subsection (C) or subsection (D), shall be sourced as follows:
1. For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (A). Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.
 2. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (A).
 3. This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.
- C. The retail sale, including lease or rental, of transportation equipment not subject to the purchase and use tax administered by the Department of Motor Vehicles shall be sourced the same as a retail sale in accordance with the provisions of subsection (A), notwithstanding the exclusion of lease or rental in subsection (A). "Transportation equipment" means any of the following:

1. Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.
2. Trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of 10,001 pounds or greater, trailers, semi-trailers, or passenger buses that are:
 - (a) Registered through the International Registration Plan; and
 - (b) Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.
3. Aircraft except those exempted by 32 V.S.A. §9741(29) as aircraft sold for use in air commerce.
4. Containers designed for use on and component parts attached or secured on the items set forth in subsections (D)(1) through (D)(3).

Reg. § 1.9701(8)-4 Direct Mail Sourcing

A. Notwithstanding the general sourcing rules stated herein, the following provisions apply to sales of “advertising and promotional direct mail”:

1. A purchaser of “advertising and promotional direct mail” may provide the seller with either:
 - (a) A direct pay permit;
 - (b) An Agreement certificate of exemption claiming “direct mail”; or
 - (c) Information showing the jurisdictions to which the “advertising and promotional direct mail” is to be delivered to recipients.
2. If the purchaser provides the permit, certificate or statement referred to in subparagraph a or b of subsection A of this section, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving “advertising and promotional direct mail” to which the permit, certificate or statement applies. The purchaser shall source the sale to the jurisdictions to which the “advertising and promotional direct mail” is to be delivered to the recipients and shall report and pay any applicable tax due.
3. If the purchaser provides the seller information showing the jurisdictions to which the “advertising and promotional direct mail” is to be delivered to recipients, the seller shall source the sale to the jurisdictions to which the “advertising and promotional direct mail” is to be delivered and shall collect and remit the applicable tax. In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of “advertising and promotional direct mail” where the seller has sourced the sale according to the delivery information provided by the purchaser.

4. If the purchaser does not provide the seller with any of the items listed in subparagraphs a, b or c of paragraph 1 of subsection A of this section, the sale shall be sourced according to Reg. § 1.9701(8)-3(A)(5). The state to which the “advertising and promotional direct mail” is delivered may disallow credit for tax paid on sales sourced under this paragraph.
- B. Notwithstanding Reg. § 1.9701(8)-3, the following provisions apply to sales of “other direct mail.”
1. Except as otherwise provided in this paragraph, sales of “other direct mail” are sourced in accordance with Reg. § 1.9701(8)-3(A)(3).
 2. A purchaser of “other direct mail” may provide the seller with either:
 - (a) A direct pay permit; or
 - (b) An agreement certificate of exemption claiming “direct mail.”
 3. If the purchaser provides the permit, certificate or statement referred to in subparagraph a or b of paragraph 2 of subsection B of this section, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay or remit any tax on any transaction involving “other direct mail” to which the permit, certificate or statement apply. Notwithstanding paragraph 1 subsection B, the sale shall be sourced to the jurisdictions to which the “other direct mail” is to be delivered to the recipients and the purchaser shall report and pay applicable tax due.
- C. For purposes of this section:
1. “Advertising and promotional direct mail” means:
 - (a) Printed material that meets the definition of “direct mail,” in 32 V.S.A. § 9701(28);
 - (b) The primary purpose of which is to attract public attention to a product, person, business or organization, or to attempt to sell, popularize or secure financial support for a product, person, business or organization. As used in this subsection, the word “product” means tangible personal property, a product transferred electronically or a service.
 2. “Other direct mail” means any direct mail that is not “advertising and promotional direct mail” regardless of whether “advertising and promotional direct mail” is included in the same mailing. The term includes, but is not limited to:
 - (a) Transactional direct mail that contains personal information specific to the addressee including, but not limited to, invoices, bills, statements of account, payroll advices;

- (b) Any legally required mailings including, but not limited to, privacy notices, tax reports and stockholder reports; and
- (c) Other non-promotional direct mail delivered to existing or former shareholders, customers, employees, or agents including, but not limited to, newsletters and informational pieces.

Other direct mail does not include the development of billing information or the provision of any data processing service that is more than incidental.

D. 1. (a) This section applies to a transaction characterized under state law as the sale of services only if the service is an integral part of the production and distribution of printed material that meets the definition of “direct mail.”

(b) This section does not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental regardless of whether “advertising and promotional direct mail” is included in the same mailing.

2. If a transaction is a “bundled transaction” that includes “advertising and promotional direct mail,” this section applies only if the primary purpose of the transaction is the sale of products or services that meet the definition of “advertising and promotional direct mail.”

3. Nothing in this section shall limit any purchaser’s:

(a) Obligation for sales or use tax to any state to which the direct mail is delivered,

(b) Right under local, state, federal or constitutional law, to a credit for sales or use taxes legally due and paid to other jurisdictions, or

(c) Right to a refund of sales or use taxes overpaid to any jurisdiction.

Reg. § 1.9701(8)-5 Telecommunication Sourcing Definitions

For the purpose of the Telecommunication Sourcing Rule, Reg. § 1.9701(8)-7, the following definitions apply:

A. “Air-to-Ground Radiotelephone Service” means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

B. “Ancillary services” means services that are associated with or incidental to the provision of telecommunications services including but not limited to detailed telecommunications billing, directory assistance, vertical service, and voice mail services. 32 V.S.A. § 9701(42).

- C. “Call-by-call Basis” means any method of charging for telecommunications services where the price is measured by individual calls.
- D. “Communications Channel” means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.
- E. “Customer” means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under Reg. § 1.9701(8)-7. “Customer” does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider’s licensed service area.
- F. “Customer Channel Termination Point” means the location where the customer either inputs or receives the communications.
- G. “End user” means the person who utilizes the telecommunication service. In the case of an entity, “end user” means the individual who utilizes the service on behalf of the entity.
- H. “Home service provider” means the same as that term is defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 124(5).
- I. “Mobile telecommunications service” means the same as that term is defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 124(7).
- J. “Place of primary use” means the street address representative of where the customer’s use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, “place of primary use” must be within the licensed service area of the home service provider.
- K. “Post-paid calling service” means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service.
- L. “Prepaid calling service” means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.
- M. “Prepaid wireless calling service” means a telecommunications service that provides the right to utilize a mobile wireless service as well as other non-telecommunications services including the download of digital products delivered electronically, content, and ancillary services, which must

be paid for in advance, that is sold in predetermined units of dollars of which the number declines with use in a known amount. *See also* Reg. § 1.9771(5)-1(A)(6).

N. “Private communication service” means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and other associated services that are provided in connection with the use of such channel or channels. 32 V.S.A. § 9701(39); *see also* Reg. § 1.9771(5)- 1 (B)(2).

O. “Service address” means:

1. The location of the telecommunications equipment to which a customer’s call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

2. If the location in subsection (L)(1) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller’s telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

3. If the locations in subsection (L)(1) and subsection (L)(2) are not known, the service address means the location of the customer’s place of primary use.

See also 32 V.S.A. § 9701(19) (definition of “Telecommunications service”); 32 V.S.A. § 9701(42) (definition of “Ancillary services”); Reg. § 1.9771(5) (Imposition of tax on telecommunications service and ancillary services).

Reg. § 1.9701(8)-6 Telecommunication Sourcing Rule

A. Except for the defined telecommunication services enumerated in subsection (C), the sale of telecommunication service sold on a call-by-call basis shall be sourced to (i) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction, or (ii) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

B. Except for the defined telecommunication services enumerated in subsection (C), a sale of telecommunications services sold on a basis other than a call-by-call basis is sourced to the customer’s place of primary use.

C. The sale of the following telecommunication services shall be sourced to each level of taxing jurisdiction as follows:

1. A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service is sourced to the customer’s place of primary use as required by the Mobile Telecommunications Sourcing Act, 4 U.S.C. §§ 116-126. *See* 32 V.S.A. § 9782.

2. A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller's telecommunications system, or (ii) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

3. A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with Reg. § 1.9701(8)-3. Provided however, in the case of a sale of a prepaid wireless calling service, the rule provided in Reg. § 1.9701(8)-3 (A)(5) shall include as an option the location associated with the mobile telephone number.

D. The sale of internet access service is sourced to the customer's place of primary use.

E. The sale of directory assistance service (a taxable ancillary service) is sourced to the customer's place of primary use. *See* Reg. § 1.9771(5)-2 (Tax not imposed on ancillary services, with the exception of directory assistance service; definitions of ancillary services).

Reg. § 1.9701(8)-7 Admissions to Places of Amusement Sourcing Rule

The charges for admission to places of amusement is destination-based. The sale of admission tickets or charges is sourced to the location of the entertainment or recreation facility.

Reg. § 1.9701(8)-8 Access to Programming Sourcing Rule

The charges for access to cable television systems, other programming systems, and game or gaming machines under 32 V.S.A. §9771(4) is sourced to the customer's residential street address or primary business street address.

Reg. § 1.9701(8) – 9 Specified Digital Products Sourcing Rule

The charges for sales of specified digital products in 32 V.S.A. §9771(8) are sourced to the location of the customer's residential street address or primary business street address.

Reg. § 1.9701(19) Telecommunications Service

See Reg. § 1.9771(5)-1 (imposition of tax on telecommunications service, with definitions); Reg. § 1.9701(8)-6 (Telecommunication Sourcing Definitions); Reg. § 1.9701(8)-7 (Telecommunication Sourcing Rule).

Reg. § 1.9701(42) Ancillary Services

See Reg. § 1.9771(5)-2 (tax not imposed on ancillary services, with the exception of directory assistance service; definitions of ancillary services).

Reg. § 1.9701(45) Transferred Electronically

“Transferred electronically” means obtained by the purchaser by means other than tangible storage media. The term “transferred electronically” does not include “ancillary services,” “computer software,” and “telecommunications services.” *See* 32 V.S.A. § 9701(42) (definition of ancillary services); 32 V.S.A. § 9701(19) (definition of telecommunications services).

Reg. § 1.9701(47) End User

A person that purchases products “transferred electronically” or the code for “specified digital products” for the purpose of giving away such products or code shall not be considered to have engaged in the distribution or redistribution of such products or code and shall be treated as an end user and the transaction is subject to the tax. *See* 32 V.S.A. § 9701(45) (definition of “transferred electronically”); 32 V.S.A. § 9701(46) (definition of “specified digital products”).

Reg. §1.9701(51) Planting Mix

“Planting mix” means material that: (A) is used in the production of plants, and (B) consists of 66% or more of compost, peat moss, or coir and other ingredients that contribute to fertility and porosity, including perlite, vermiculite, and other similar materials.

Reg. § 1.9707-1 Registration of Sellers

A. The following persons must register to collect Vermont sales or use tax:

1. Every person making sales of tangible personal property, services or specified digital products transferred electronically to an end user, the receipts from which are subject to tax in Vermont.
2. Every person maintaining a place of business in the state and making sales, whether at that place of business or elsewhere, to persons within the state of tangible personal property, services or specified digital products transferred electronically to an end user, the use of which is subject to tax.
3. Every person who solicits business in this state either by employees, independent contractors, agents or other representatives or by distribution of catalogs or other advertising matter and by reason thereof makes sales to persons within the state of tangible personal property, services or specified digital products transferred electronically to an end user, the use of which is subject to tax.
4. The State of Vermont or any of its agencies, instrumentalities, public authorities, public corporations (including public corporations created pursuant to agreement or compact with another state or states) or political subdivision when that entity sells services or property of a kind ordinarily sold by private persons.
5. Every person purchasing tangible personal property for resale.

6. Every person receiving receipts from admission charges (including any subsidiary, service or cover charge), charges incident to, or any charges for the use of any place of recreation or amusement. *See* 32 V.S.A. § 9771(4); Reg. § 1.9771(4).
7. A person not otherwise required to collect Vermont tax who voluntarily collects the tax.

B. Sellers Registering Under the Streamlined Sales Tax Agreement

1. A seller registering online under the Agreement shall be registered in each of the Streamlined Sales Tax member states.
2. A model 2, model 3, or model 4 seller may elect to be registered in one or more states as a seller which anticipates making no sales into such state(s) if it has not had sales into such state(s) for the preceding 12 months. Such election does not relieve the seller of its agreement to collect taxes on all sales into such states or its liability for remitting to the proper states any taxes collected. Withdrawal or revocation of a member state shall not relieve a seller of its responsibility to remit taxes previously or subsequently collected on behalf of the state.
3. A seller is not required to pay any registration fees or other charges to register in Vermont if the seller has no legal requirement to register in this state.
4. A seller may cancel its registration under the system at any time in accordance with uniform procedures adopted by the Streamlined Sales Tax Governing Board. Cancellation does not relieve the seller of its liability for remitting to the proper states any tax collected.

C. Licenses

1. Sellers may register and obtain a sales tax license online by accessing the online registration system and completing the appropriate registration form, or may submit to the Commissioner a paper registration form. In the case of online registration, a written signature from the seller is not required. Upon registration, the Commissioner shall provide the seller with a license. Registrants under the Streamlined Sales Tax Agreement shall register using the Agreement's online Central Registration System. *See* Reg. § 1.9707-1(B), above.
2. A seller must obtain a separate license for each place of business in Vermont, and the license must be prominently displayed therein. In the case of a mobile seller that sells from one or more vehicles, each vehicle shall constitute a place of business for which a license must be obtained.
3. Where a seller has no regular place of business in Vermont, the application for license shall set forth the place to which any notice or other communication authorized by Chapter 233 of Title 32 shall be mailed.
4. No license shall be assignable or transferable, but it may be used by the legal representative of a deceased, incompetent, bankrupt or insolvent registrant.
5. A seller may be registered by an agent.

C. Cancellation of a License

The original license is void and must be immediately surrendered to the Commissioner in the following situations:

1. The business is discontinued.
2. The business is transferred to new owners. A transfer includes a lease.
3. When the form of business ownership is changed: for example, when an unincorporated business incorporates, or a corporation dissolves and one or more members continue the business in a new form of ownership; or when an individual doing business changes to a partnership, or when a partnership changes its members.

D. Amendment of a License

In the following situations the original license will remain effective, but the license holder must notify the Department:

1. A change of business or trade name without a change in ownership.
2. A change of business location or mailing address.

In such instances the Department will provide the licensee a corrected license.

E. Amnesty for Registration

Pursuant to the following rules, amnesty is available to businesses registering under the Streamlined Sales and Use Tax Agreement (Agreement). To qualify, the business must register via the Agreement's Central Registration System in all jurisdictions that are members to the Agreement.

Subject to the limitations in this section:

1. A seller who registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in the state in accordance with the terms of the Agreement, which seller was not so registered in the state in the twelve-month period preceding January 1, 2007, shall not be liable for uncollected sales or use tax.
2. Provided a seller registers within twelve months of January 1, 2007, the Commissioner shall not assess against the seller uncollected sales or unpaid use tax together with penalty or interest for sales made during the period the seller was not registered in the state.
3. The Commissioner shall not provide amnesty to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and which audit is not yet finally resolved including any related administrative and judicial processes.

4. The Commissioner shall not provide amnesty for sales or use taxes already paid or remitted to the state or for taxes collected by the seller.
 5. The amnesty is fully effective, absent the seller's fraud or intentional misrepresentation of a material fact, as long as the seller continues registration and continues payment or collection and remittance of applicable sales or use taxes for a period of at least thirty-six months. There is no statute of limitations for unfiled returns. *See* 32 V.S.A. § 9815.
 6. The amnesty is applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a buyer.
- F. The Commissioner will not use registration with the Central Registration System and collection of taxes in member states in determining whether seller has nexus with the State of Vermont for any tax at any time.

Reg. § 1.9707-2 Registration of Businesses Other than Sellers

In addition to those taxpayers required to register under Reg. § 1.9707(1)-1, the following entities must register with the Commissioner:

- A. An entity that qualifies for exempt status under 32 V.S.A. § 9743(3) even though sales, services or amusements charged by or to the organization, or used by the organization, are not subject to sales and use tax. *See* Reg. § 1.9743(C).
- B. Taxpayers who make recurring purchases of tangible personal property or withdraw from inventory for taxable uses tangible personal property upon which no sales tax was paid. Such taxpayers shall register and report use tax liabilities on returns in accordance with the filing requirements of 32 V.S.A. § 9775.

Reg. § 1.9707-3 Streamlined Sales Tax Agreement Confidentiality and Privacy Protections for Model 1 Sellers

- A. The purpose of this section is to set forth the policy for the protection of the confidentiality rights of all participants in the system and of the privacy interests of consumers who deal with Model 1 sellers, as defined in Reg. § 1.9775(E)(3).
- B. As used in this section, the term “confidential taxpayer information” means all information that is protected under Vermont’s laws, regulations, and privileges; the term “personally identifiable information” means information that identifies a person; and the term “anonymous data” means information that does not identify a person.
- C. With very limited exceptions, a CSP shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.

- D. When any personally identifiable information that has been collected and retained is no longer required to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased and for documentation of the correct assignment of taxing jurisdictions, such information shall no longer be retained by the Commissioner.
- E. When personally identifiable information regarding an individual is retained by or on behalf of the Commissioner pursuant to the Agreement, the Commissioner shall provide reasonable access by such individual to his or her own information in the state's possession and a right to correct any inaccurately recorded information.
- F. If anyone seeks to discover personally identifiable information other than a member state to the Agreement or a person authorized by that state's law or the Agreement, the Commissioner shall make a reasonable and timely effort to notify the individual of such request.

Reg. § 1.9709-1 Records to Be Kept; General Requirements

- A. Every person required to collect and every purchaser required to pay the sales or use tax shall maintain all records that are necessary for a determination of the correct tax liability. Such records must show the total and individual sales prices of taxable and nontaxable items.

Such records shall include, but not necessarily be limited to, the normal books of account ordinarily maintained by the average prudent business person engaged in the activity in question, together with all bills, receipts, invoices, cash register tapes, sales slips, or other documents of original entry supporting the entries in the books of account, as well as all schedules or working papers used in conjunction with the preparation of tax returns.

- B. All required records must be made available on request by the Commissioner or the Commissioner's duly authorized agent or employee.
- C. If a taxpayer retains records required to be retained under this regulation in both electronic and hard-copy formats, the taxpayer shall make the records available to the Commissioner in the form requested by the Commissioner.
- D. Nothing in this regulation shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not such taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this regulation. The taxpayer is not relieved of its obligation under the preceding paragraph, however, to provide electronic records when so requested by the Commissioner.

Reg. § 1.9709-2 Electronic Records

- A. Electronic records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the electronic records can be identified and made available to the Commissioner upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this regulation are met.
- B. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.
- C. Taxpayers are not required to construct electronic records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.
- D. Electronic records must contain a level of record detail that is equivalent to that which is contained in an acceptable paper record. For example, the retained records should contain such information as customer name, seller name, invoice number, date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the Commissioner to interpret the coded information.
- E. Business Process Information

Upon the request of the Commissioner, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

The taxpayer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system,
2. the internal controls used to ensure accurate and reliable processing; and
3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

F. Access to Electronic Records

The manner in which the Commissioner is provided access to electronic records as required in this regulation may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer:

1. The taxpayer may arrange to provide the Commissioner with the hardware, software and personnel resources to access the records.

2. The taxpayer may arrange for a third party to provide the hardware, software and personnel resources necessary to access the records.
3. The taxpayer may convert the electronic records to a standard record format that is agreed to and specified by the Commissioner.
4. The taxpayer and the Commissioner may agree on other means of providing access to the records.

Reg. § 1.9709-3 Alternative Storage Media

A. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this regulation to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this regulation are met. The documents must exhibit a high degree of legibility and readability. Documents that may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

B. Upon request by the Commissioner, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche or other storage-only imaging system.

Reg. § 1.9709-4 Records Retention – Time Period

Records required to be retained under this regulation shall be preserved for a period of three years in accordance with 32 V.S.A. § 9709 unless the Commissioner or the Commissioner's duly authorized representative has approved in writing an earlier date of destruction. The time for retention shall begin to run from the date on which the taxpayer files the return. In light of 32 V.S.A. § 9815 which allows the Commissioner to assess tax beyond the three-year period, and 32 V.S.A. § 9813 which places the burden of proving tax exemptions on the person required to collect the tax, a prudent taxpayer may choose to retain such records for a longer period of time.

Reg. §1.9711 Election by Manufacturer or Retailer

A person primarily engaged in the business of manufacturing or the business of making retail sales of tangible personal property may make an election under Section 9711 to be treated as a retailer when purchasing materials and supplies to be used in improving, altering or repairing real property. "Primarily" means more than 50 percent of the business's gross receipts in the prior calendar year were from manufacturing or retail sales, respectively.

REG. SEC. 1.9741 EXEMPTIONS

Reg. § 1.9741 In General

Section 9741 (“Sales not covered”) exempts specific otherwise-taxable sales from sales and use tax. Sections 9742 (“Transactions not covered”), 9743 (“Organizations not covered”) and 9744 (“Property exempt from use tax”) provide additional exemptions from the tax.

If an exemption is “entity-based,” its applicability to a sales transaction is determined by the identity of either the seller or purchaser. For example, sales of the United States flag either to or by veterans’ organizations exempt under Section 501(c)(19) of the Internal Revenue Code are exempt from the tax. 32 V.S.A. § 9741(33).

If an exemption is “use-based,” its applicability to a sales transaction is determined by the purchaser’s actual use of the product. For example, the sale of fuels used directly and exclusively for farming purposes is exempt from the tax. 32 V.S.A. § 9741(27).

If an exemption is “product-based,” it is immaterial who purchases the product or its intended use by the purchaser. For example, because the exemption for drugs intended for human consumption is a product-based exemption, aspirin is exempt even if the purchaser uses the drug to nourish his houseplants, rather than as a human medication.

Exemptions from the sales and use tax are strictly construed. The burden of proving an exemption is on the person required to collect the tax. 32 V.S.A. § 9813.

Reg. § 1.9741(2) Medical Exemption

Drugs intended for human use, durable medical equipment, mobility enhancing equipment, and prosthetic devices are exempt from tax. Supplies, including but not limited to blood, blood plasma, insulin and medical oxygen are exempt if they are the type commonly and primarily used in treatment, including self-treatment, intended to alleviate human suffering or to correct human physical disabilities. Such supplies must be designed primarily to cure, correct, or reduce the severity of human ailments, injuries or disabilities. Supplies that are primarily hygienic or preventative in nature are not exempt.

A. “Drugs,” as defined by 32 V.S.A. § 9701(29), are exempt from tax. Both prescription and over-the-counter drugs that meet the requirements of this section are exempt.

1. “Prescription” means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of the state.

2. An “over-the-counter drug,” also referred to as a non-prescription drug, is a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. Examples of typical over-the-counter drugs that are exempt from tax include, but are not limited to: aspirin, ibuprofen and similar pain-relief medications and analgesics; analgesic salves and liniments; antacids; acne medications, antiseptics and medicated soaps used for the treatment of infection and

skin diseases; medicated burn remedies; cough and cold medications such as throat lozenges, cough drops and syrups, decongestants and antihistamines; analgesic toothache preparations and dental repair kits; eye preparations for the healing or treatment of the eyes such as contact lens solutions, eye drops, ointments and washes; laxatives, cathartics and suppositories.

“Over-the-counter-drugs” do not include grooming and hygiene products ~~means items~~ such as non-medicated soaps and cleaning solutions, non-medicated shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and screens.

B. Non-prescription vitamins and dietary supplements are not exempt under 32 V.S.A. § 9741(2) but are exempt from tax as food under 32 V.S.A. § 9741(13); *see also* 32 V.S.A. § 9701(27) (defining dietary supplement); 32 V.S.A. § 9701(31) (defining food and food ingredients).

C. Both “durable medical equipment” and “mobility-enhancing equipment” are exempt from the tax.

1. “Durable medical equipment” means equipment, including repair and replacement parts for such equipment, which can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, and is not worn on or in the body. 32 V.S.A. § 9701(30). “Repair and replacement parts” as used in this definition include all components or attachments used in conjunction with the durable medical equipment.

Examples of exempt durable medical equipment include bath and shower chairs, commode chairs, dialysis treatment equipment, drug infusion devices, feeding pumps, hospital beds, MRIs, oxygen equipment, resuscitators, and x-ray machines. Furniture in a hospital or doctor’s waiting room is not exempt because it does not serve a medical purpose and is not designed to be used in the treatment of human ailments or disabilities.

2. “Mobility-enhancing equipment” means equipment, including repair and replacement parts of such equipment, which is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle, is not generally used by persons with normal mobility, and does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer. 32 V.S.A. § 9701(34).

Common examples of exempt mobility enhancing equipment include wheelchairs, stairlifts, canes, crutches, motorized carts, and walkers. No prescription is necessary for an item to be characterized as mobility enhancing equipment.

D. “Prosthetic devices” are exempt from the tax. “Prosthetic device” means a replacement, corrective, or supportive device, including repair and replacement parts for such device worn on or in the body to artificially replace a missing portion of the body, prevent or correct a physical deformity or malfunction, or support a weak or deformed portion of the body. 32 V.S.A. § 9701(35).

Examples of prosthetic devices include artificial limbs, artificial eyes, prescription eyeglasses and contact lenses, hearing aids, dentures and dental appliances, electronic voice producing machines, cranial hair prosthesis, cervical collars, heart valves, pacemakers, orthotic devices, trusses, and fabric and elastic supports and braces.

E. Supplies used in treatment are exempt from the tax. The supply must be therapeutic in nature, not normally used by persons absent illness or injury, and in contrast to durable medical equipment, not capable of repeated usage.

Examples of supplies that are exempt include bandages and surgical dressings, hypodermic syringes and needles, disposable heating pads, and colostomy devices. Examples of supplies not exempt from the tax are body massage appliances, therapeutic foot baths, room humidifiers and air conditioners, household baby and bathroom scales, athletic supporters, medic alert bracelets, and hot tubs.

Reg. § 1.9741(3)-1 Agricultural Supplies Exemption

A. The agricultural supplies exemption is generally product-based, and the supplies identified in the first clause of the exemption statute – agriculture feeds, seed, plants, baler twine, silage bags, agricultural wrap, sheets of plastic for bunker covers, liming materials, breeding and other livestock, semen breeding fees, baby chicks, turkey poults, agriculture chemicals other than pesticides, veterinary supplies, and bedding – are exempt if they are of the type of product that is typically used in agriculture. For these items, the seller is not required to obtain an exemption certificate from the purchaser. *See* Reg. §§ 1.9745, 1.9741(25)-7 (discussing exemption certificates).

Agriculture means the science or act of producing agronomic and horticultural crops, farm products, and raising livestock. Livestock includes cattle, sheep, goats, equines, fallow deer, red deer, reindeer, American bison, swine, poultry (including pheasant, chukar partridge, and coturnix quail), camelids and ratites, rabbits when raised for meat, cultured fish propagated by commercial fish farms and bees.

B. Where the enumerated exempt items are not of the type ordinarily used in agriculture, they are exempt only if the intended use is agricultural. For example, grass seed is in general taxable because the planting of lawns is ordinarily not an agricultural use. If the seed is used by a farmer who grows sod for resale, the seller must collect tax on the seed unless the purchaser provides an exemption certificate.

C. Veterinary supplies are exempt from tax under the agricultural supplies exemption when they are ordinarily used for livestock. No exemption certificate is necessary. Veterinary supplies that are ordinarily used for non-livestock animals, such as pets, are only exempt when the intended use is for livestock, and in this case, the seller must collect tax on the supplies unless the purchaser provides an exemption certificate.

D. “Veterinary supplies” means supplies that are therapeutic in nature commonly and ordinarily used in the treatment of livestock, and, in contrast to durable equipment, are not capable of repeated usage. Veterinary medical equipment is not exempt under this section but may be exempt under the durable medical equipment exemption in 32 V.S.A. §9741(2) and Reg. §1.9741(2). Veterinary drugs are not exempt under this exemption but may be exempt under 32 V.S.A. §9741(2) and Reg. §1.9741(2).

E. The exemption for fertilizers and pesticides is use-based because these products are exempt only when used and consumed directly in the production for sale of tangible personal property on farms. The seller must collect tax unless the purchaser provides an exemption certificate.

F. Agricultural supplies, other than fertilizers and pesticides as discussed in subsection (E) and veterinary supplies as discussed in subsection (C) and the specific products listed in subsection (A) of this section, are taxable unless otherwise exempted by law, even if used in agriculture. Machinery and equipment are not exempt under this section but may be exempt under the provisions of 32 V.S.A. § 9741(25) and Reg. § 1.9741(25).

Reg. § 1.9741(3)-2 Examples

The following list is for illustrative purposes only:

1. Feed for feeding pets or other animals not considered livestock is not exempt because it is not agricultural feed. Pet food sold by a veterinarian is not considered a veterinary supply and is taxable.
2. Seed designed and marketed for feeding wild birds is not an agricultural seed (or feed) and is taxable.
3. The sale of agricultural chemicals designed and marketed for use on lawns or for any other non-agricultural use is taxable.
4. The sale of flowering plants or shrubs for use in flower gardens and landscaping is taxable. Fruit trees and vegetable plants are considered agricultural supplies and are exempt, even when not purchased for commercial use.
5. The sale of disposable loose materials, including straw, shavings, sand, sawdust, leaves, and shredded paper for use where livestock may lie, and the sale of mats made of rubber or other material specifically designed and sold for bedding farm animals, is exempt from the tax as the sale of “bedding.” The sale of such materials when packaged and marketed as bedding for pets or other animals not considered livestock is taxable. Potting soil, rocks, sand, gravel, compost, landscape mulch or similar materials for use in plant beds are not “bedding” within the meaning of the statute and are not exempt from the tax.

Reg. § 1.9741(4)-1 Casual Sales

A casual sale of tangible personal property is not subject to Vermont sales tax. Also, the use in Vermont of tangible personal property acquired through a casual sale is not subject to use tax. To qualify as a casual sale, each of the following conditions must apply:

1. The sale must be isolated or occasional;
2. The seller must not be regularly engaged in the business of making sales of that general type of property at retail;
3. The property must have been obtained by the person making the sale, through purchase or otherwise, for his or her own use, and

4. The property does not qualify as aircraft as defined in 5 V.S.A. § 202(6), snowmobiles, motorboats, or vessels 16 feet or more in length as defined in 23 V.S.A. §§ 3201(5), 3302(4), and 3302(11), respectively.

Reg. § 1.9741(4)-2 Scope of Exemption

A person who makes what would otherwise be considered a casual sale is required to collect and remit sales tax if the sale or series of sales is sufficient in number, scope and character. The inquiry is a factual one. Factors to be considered include the frequency of sales, their dollar volume, whether the sales are advertised, how the sales are advertised, whether the seller holds sales in a permanent venue, and the sales' similarity to the seller's normal business activity or operations. As a general rule, a person engaged in sales activity more than three times per calendar year, held on a total of more than six calendar days per year, is not making casual sales.

Reg. § 1.9741(4)-3 Examples

The following examples are for illustrative purposes only:

A. Casual Sales

1. Occasional sales of tangible personal property, originally acquired for the seller's own use, at a moving, garage or yard sale, or through a classified ad;
2. An insurance agent making an isolated sale of her office copying machine, or a jeweler selling a used display case;
3. Sales of tangible personal property by executors, administrators, trustees, receivers, or other fiduciaries, except when they continue the operation of a business as sellers of tangible personal property at retail;
4. Legal sales or executions pursuant to a court order;
5. Bulk sales of business assets when ownership of a business or portion of a business is transferred. *See* 32 V.S.A. § 3260.

B. Non-Casual Sales

The following sales are not casual sales and unless otherwise exempted by law, are taxable:

1. Retail sales by manufacturers or wholesalers, even though such sales are infrequent and only comprise an insignificant fraction of their total business;
2. Sales that constitute an integral part of a business, such as the sale of repossessed fixtures or other property by a finance company, even though the sale of tangible personal property is not the primary function of such business;

3. The sale by a business of its used or outdated equipment in piecemeal fashion over a period of time to either the same or different purchasers;
4. The sale of tangible personal property at a flea market by a seller who makes recurring sales that exceed those allowable under this regulation;
5. Sales made only on a seasonal basis, such as Christmas tree or wreath sales;
6. Sales by any individual artist or craftsman who makes recurring, occasional sales of his or her own handmade or crafted art or craft objects;
7. Sales made by an agent for the seller such as those made at consignment stores, craft fairs or cooperatives, or antique malls;
8. Sales made by auctioneers, except those exempted under 32 V.S.A. §9741(48). Sales made by auctioneers (including any buyer's premium charged by the auctioneer) are exempt if:
 - (a) the auctioneer is licensed under Vermont Statutes title 26, chapter 89;
 - (b) the auction is conducted on the premises of the owner of the property and no other person's property is sold in the auction; and
 - (c) the property was obtained by the owner, through purchase or otherwise, for his or her own use.

Reg. § 1.9741(12) Motor Vehicles

The purchase and use of motor vehicles in Vermont is taxed under Chapter 219 of Title 32 and is exempt from sales and use tax. The exceptions to the motor vehicle purchase and use tax, enumerated in 32 V.S.A. § 8911, are also exempt from the sales and use tax. Power take off and other auxiliary equipment on motor vehicles, whether attached to a motor vehicle prior to or subsequent to the vehicle's registration, is not exempt from sales and use tax.

Notwithstanding 32 V.S.A. § 8911(5), the Commissioner may assess sales and use tax on construction, earthmoving, logging and other motorized equipment if the purchaser, at the time of the assessment, has failed to register the equipment with the Department of Motor Vehicles (DMV) and failed to pay the requisite motor vehicle purchase and use tax on such equipment. The Commissioner shall allow the purchaser sixty (60) days from the date of assessment in which to register with the DMV. If registered within the sixty-day period, the Commissioner shall issue the purchaser a credit, to be applied against the sales and use tax assessment, for the amount of purchase and use tax paid.

Reg. § 1.9741(13) Food and Beverages

Food, food stamps, purchases made with food stamps, food products and some beverages are exempt. This statutory exemption is limited to food sold for consumption off the seller's premises. Section 9741(10) of Title 32, however, provides an exemption for "taxable meals" subject to the meals and

rooms tax, resulting in an exemption from the sales tax for food whether consumed on or off the seller's premises.

Food, food products and beverages means food and food ingredients and includes substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food products specifically include candy and dietary supplements. Food, food ingredients, and beverages do not include soft drinks, alcoholic beverages or ice which are not exempt from tax under this section. *See* 32 V.S.A. § 9701(23), (53) (definition of alcoholic beverages and soft drinks). Ice is not exempt under this section because it is not sold for its taste or nutritional value. Beverage container deposits required to be paid on beverages subject to sales and use tax pursuant to 10 V.S.A. § 1522 are not included within the sales price of the taxable beverage and are not taxable when separately stated and charged to the customer. *See* 32 V.S.A. § 9701(4); Reg. § 1.9701(4) ("Sales price"). If a single charge is made for beverage and deposit, however, the entire amount is taxable. Reg. § 1.9701(4)-3.

Reg. § 1.9741(14)-1 Manufacturing Exemption

Section 9741(14) exempts from sales tax the purchase of tangible personal property that becomes an ingredient or component part of or is consumed or destroyed or loses its identity in the manufacture of tangible personal property for sale; machinery and equipment for use or consumption directly and exclusively in the manufacture of tangible personal property for sale or in the manufacture of other machinery or equipment, parts or supplies for use in the manufacturing process; and devices used to monitor manufacturing machinery and equipment or the product during the manufacturing process.

Reg. § 1.9741(14)-2 Definitions

- A. "Machinery and Equipment" means tangible personal property, capital in nature, with a useful life of one year or more, and does not include real property or supplies.
- B. "Manufacturing" means:
 - 1. Industrial processing
 - 2. Food processing
 - 3. Mineral extraction
 - 4. Information processing
- C. "Industrial Processing" means an integrated series of operations, usually involving machinery and equipment, which changes the form, composition or character of tangible personal property by physical, chemical or other means.
- D. "Food Processing" means an integrated series of operations, usually involving machinery, which produces a distinct product for commercial distribution. Food processing includes, but is not limited to, coffee roasting, milk pasteurization, homogenization and bottling, meat and meat bi-products processing, beverage and water bottling, canning, freezing and the production of maple

products. Farm or greenhouse operations, retail operations such as restaurants, grocery stores or butcher shops are neither "food processing" nor "industrial processing."

E. "Mineral Extraction" means an integrated series of operations that extract deposits of ore, stone, sand and gravel or other naturally occurring deposits from the earth. Mineral extraction includes mine and quarry operations, water and oil wells and gravel pits. Excluded from mineral extraction are recovery operations from slag piles or grout piles or other process waste operations.

F. "Information Processing" means an integrated series of operations in which information or images are produced and sold as tangible personal property. Information processing includes the production of newspapers, pamphlets, books, computer software (such as "canned" or "off the shelf" software), motion pictures and recorded audio and video tapes, CD ROMs and photographs. Information processing does not include the preparation of reports, documents, or statements, in a transaction in which tangible personal property is not the focus of the transaction.

G. "Manufacturing Process" means:

1. For industrial and food processing, the term "manufacturing process" means an integrated series of production activities beginning with the first production process and ending with the initial packaging of the product. If the product is not packaged, the manufacturing process ends with the last step that places the product in the form in which it is sold. Not included in the term "manufacturing process" are activities prior to the first production stage (such as collecting, weighing, testing, and bulk storage of raw materials) or any activities following initial packaging (such as secondary packaging, loading, delivery or transportation of finished goods following initial packaging to storage). The first production stage generally begins at the time the raw materials that are used or consumed in the manufacturing process are removed from storage. Thus, for example, conveyors, motorized lifts, cranes, chain falls and chemical, gas and electrical distribution systems constitute machinery and equipment used in the manufacturing process and would be exempt if used exclusively in such process.

2. For the mineral extraction process the term "manufacturing process" means a series of operations beginning with the removal of the mineral or overburden from the ground and ending with initial packaging and includes road construction within the quarry as long as the construction is a part of an integrated series of events leading to the extraction of mineral deposits.

3. For information processing operations, the term "manufacturing process" begins with the first direct steps in creating the text, image, tape or other product, through initial packaging. Excluded from the definition are management and accounting, research and other preparatory activities.

H. "Initial Packaging" means the packaging used to reach the stage of containment most commonly received by the ultimate consumers of the product. In a case where a means of containment of a product is necessary before a continuation of the manufacturing process, initial packaging will be that stage in the process where the product is in the form in which retail consumption occurs. Initial packaging does not include freight cars, trucks, trailers or other such means of transportation

even though the product has not undergone any prior packaging. Also excluded from initial packaging are pallets, shipping cartons, etc., that are used after initial packaging and cartons or other shipping materials applied to an otherwise unpackaged product at a location or time remote from the production of the product.

Reg. § 1.9741(14)-3 Manufacturing Supplies Exemption

- A. Tangible personal property that becomes an ingredient or component part of manufactured tangible personal property that will be sold by a manufacturer in the regular course of its business is exempt.
- B. Manufacturing materials and supplies consumed or destroyed in the manufacture of tangible personal property for sale are exempt. Tangible personal property that is purchased for use in the manufacture of tangible personal property for later sale and that has a normal life expectancy of less than one year in the use to which it is applied will be considered as consumed or destroyed within the meaning of the exemption. The question of whether items are consumed or destroyed must be answered on the basis of the facts and circumstances pertaining to the use in question.
 - 1. “Life expectancy” means physical life expectancy as a usable item, not obsolescence. An article with a physical life expectancy of well over a year might become obsolete within a few months. Nevertheless, it would not be considered as consumed or destroyed within the meaning of the statute.
 - 2. Property with a life expectancy of more than one year may be exempt as manufacturing machinery and equipment, in which case its exemption would rest on the direct and exclusive test.
- C. Equipment and supplies, including soaps and cleaning compounds, brushes, brooms, mops and similar items, used for general cleaning and maintenance of manufacturing or processing property are not exempt from taxation.
- D. The phrase "in the manufacture of" shall be interpreted to exclude the periods before manufacture and after manufacture. Thus, the exemption does not extend to the procurement of raw materials except the extraction of mineral deposits and it does not extend to the storage and transportation of the finished product. Similarly, the exemption does not extend to administration, sales, advertising and other ancillary activities that are not an essential and integral part of the manufacturing process.
- E. Protective clothing or protective equipment, as defined in 32 V.S.A. §9701(36) will be considered exempt if worn to protect the integrity of the product, manufacturing process or the employee during the manufacturing operation.

Reg. § 1.9741(14)-4 Equipment, Machinery or Parts Used Directly and Exclusively in Manufacturing

A. In General

The purchase of machinery and equipment is exempt from tax if such machinery and equipment is used directly and exclusively in the manufacture of tangible personal property for sale, in the manufacture of other manufacturing machinery and equipment, or in the manufacture of parts or supplies for use in the manufacturing process.

An electrical distribution system, including electrical switchgear, transformers, cables, and related equipment used to supply power to the machinery and equipment that comprise the manufacturing process will be considered to be machinery and equipment used in the manufacturing process at the point they are dedicated to such process.

Machinery and equipment employed in pre-production or post-production is not eligible for exemption. Machinery and equipment used in non-production activities such as safety, pollution or sound abatement, administration, general climate control, illumination, general wiring and waste control is not exempt.

B. Direct Use

1. In determining whether machinery and equipment is directly used, the following factors are considered together with other relevant facts and circumstances:

- (a) The active causal relationship that exists between the use of the machinery and equipment in question and the production of a product;
- (b) Whether the machinery and equipment in question operates with an exempt machine or piece of equipment to complete or facilitate an integrated and synchronized system;
- (c) Whether the machinery and equipment in question guarantees the integrity or quality of the manufactured product;
- (d) The physical proximity of the machinery and equipment in question to the production process; lack of physical proximity by itself will not establish that a use is not direct.

2. The fact that particular machinery or equipment may be considered essential to the conduct of the business of manufacturing because its use is required either by law or practical necessity does not, of itself, mean that the machinery or equipment is "used directly" in the manufacturing operation.

- (a) Machinery or equipment used to test or inspect the product, or to test or inspect the machinery or equipment used in the manufacturing process, is directly used in a manufacturing operation. Similarly, machinery or equipment used to monitor an activity during the manufacturing process is directly used in a manufacturing operation.

- (b) Machinery or equipment used in waste disposal is not deemed to be directly and exclusively used and is subject to tax except when the taxpayer affirmatively proves that the waste removal is both necessary to protect the quality of the product and the waste removal is integrated into the manufacturing operations. Thus, machinery and equipment used for periodic cleaning of the production area in an operation not integrated into the manufacturing operation is not directly used in manufacturing and is taxable even if manufacturing could not continue unless the waste was periodically removed from the production area. Machinery and equipment used for treating or disposing of waste or handling of waste after it has been removed from the production area is not directly used and is taxable. Machinery and equipment used to evacuate gases and minerals from the production area is exempt only when such evacuation is both necessary to guarantee the quality of the product and is integrated into the manufacturing operations.

3. Examples of exempt direct use:

- (a) Industrial fans used to remove noxious gases and particulate matter that would otherwise damage the manufactured product, when the fans are used contemporaneous with production, are exempt.
- (b) Loaders used within a quarry to remove and deposit waste rock into trucks for disposal are exempt.
- (c) Exhaust and venting systems used during the process of roasting coffee beans to remove particulate emissions, including coffee chaff, are exempt.

4. Examples of taxable indirect use:

- (a) Equipment used to control pollution or provide circulation of air in the production area is not used directly in manufacturing and is not exempt, even when required by law.
- (b) Loaders used to move waste rock and overburden from slag piles outside the lip of the quarry into trucks for disposal are not exempt. In addition, trucks used to move the waste from the yard are not exempt because removal at that juncture neither guarantees the integrity of the product nor is integrated into the manufacturing operation.
- (c) Whey and salt whey produced during the process of cheese making is waste, as is contaminated water produced from washing cheese vats, pipelines, milk separators, milk pasteurizers, the inside of the milk trucks, and other equipment. Machinery and equipment used for removal and disposal of such whey, salt whey, wastewater, and cleaning solutions used in a "clean in place" (CIP) system are not used directly in manufacturing and are therefore not exempt from tax.

C. Exclusive Use

The purchase or use by a manufacturer of machinery used directly and exclusively in manufacturing is exempt from tax. The following uses will not be considered to violate the exclusive use requirement:

1. Uses other than directly in manufacturing that are isolated or occasional provided that such uses are limited to no more than four percent of the time the machinery or equipment is operated;
2. Uses other than directly in manufacturing that are continuous or regular simultaneous uses or which exceed four percent of the time the machinery is operated, provided that no more than four percent of the output of the machinery or equipment is used for purposes other than directly in manufacturing;
3. Uses that are exempt under 32 V.S.A. § 9741(24) (commercial, industrial or agricultural research or development);
4. Uses that are exempt under 32 V.S.A. § 9741(25) (agricultural machinery and equipment).

D. Not Directly and Exclusively Used

1. Generally, buildings and fixtures used to house manufacturing operations are not directly and exclusively used in manufacturing even if they are personal property. Personal property that is directly and exclusively used in the manufacturing process will not lose its exemption based on the fact that such property also houses the manufacturing process.
2. Maintenance facilities, tools, equipment and supplies predominantly used in performing maintenance work are not exempt because maintenance or repair work is not manufacturing. For example, chain hoists, tire spreaders, welding equipment, drills, sanders, wrenches, paint brushes and sprayers, oilers, absorbent compounds, dusting compounds, air blowers, wipers, and paint or other protective or decorative coatings are subject to tax. However, replacement parts that are used to replace worn parts upon exempt machinery and equipment, such as motors, belts, screws, bolts, cutting edges, air filters or gears, are exempt.

Reg. § 1.9741(14)-5 Managerial, Sales or Nonoperational Activities

Tangible personal property, machinery or equipment used in managerial, sales or other nonoperational activities is not directly and exclusively used in manufacturing and is therefore subject to tax. This category includes, but is not limited to, tangible personal property, machinery and equipment used in any of the following activities:

- A. Manufacturing and administration. Office furniture, supplies, and equipment, textbooks and other educational materials, books and records, and all other tangible personal property including machinery and equipment used in record keeping and other administrative and managerial work, whether on or off the production line, is subject to tax. Such property includes, but is not limited to, supplies used to record the quality and quantity of work in production or goods in storage, the flow of work, the results of inspection, or to instruct workers in routing work or other production activities.
- B. Selling and Marketing. Tangible personal property, including machinery or equipment, used in advertising or marketing manufactured products for sale, transporting such products to a market or to customers, or selling such products, is not within the scope of the manufacturing exemption.

C. Safety and fire prevention. Tangible personal property, including machinery or equipment used to prevent or fight fires and supplies used for promotion of safety, accident prevention or first aid, is subject to tax even if required by law.

Reg. § 1.9741(14)-6 Space Heating, Cooling, Ventilation and Illumination

Machinery and equipment used to ventilate a building, lighting for general illumination, air conditioning and other space cooling and space heating equipment, is subject to the tax. (*See* Reg. § 1.9741(34) for the treatment of fuel and electricity used for these purposes.)

Reg. § 1.9741(14)-7 Pre-production Activities

Tangible personal property, including machinery or equipment, used to transport personnel or to collect, convey, or transport tangible personal property and storage facilities or devices used to store or "hold" tangible personal property prior to its use in the first production stage are subject to tax. (*See* discussion of "first production stage" in Reg. §1.9741(14)-2(G)(1)).

Reg. § 1.9741(14)-8 Post-production Activities

Tangible personal property, including machinery or equipment, used to transport or convey the finished product from the final manufacturing operation and storage facilities or devices used to store the product are not used directly in manufacturing and are taxable. For example, equipment that loads packaged products into cases or cartons for ease of handling in delivery is subject to tax. Machinery, equipment, supplies and other property used to convey, transport, handle or store the packaged product is also taxable.

Reg. § 1.9741(14)-9 Monitoring Machinery and Equipment

Devices used to monitor manufacturing machinery and equipment or the product during the manufacturing process are exempt from tax. To be considered exempt as monitoring equipment, the device must provide data necessary to maintain the integrity of the manufacturing process and tools. Excluded from this category are devices that are used primarily (more than fifty percent) to gather statistical data, provide security or surveillance of employees or provide inventory control.

Reg. § 1.9741(14)-10 Purchase by Contractors

Buildings and structural components are not exempt machinery or equipment. Contractors should pay tax on all such purchases of materials used to alter or improve real property. Upon occasion a contractor may also supply machinery and equipment to manufacturers. In that instance, the contractor may buy such equipment tax free as a purchase for resale by furnishing his or her supplier with an exemption certificate.

Reg. § 1.9741(14)-11 Exemption Certificate

Purchasers claiming an exemption under the provisions of this regulation are required to provide to the seller a properly executed exemption certificate.

Reg. § 1.9741(15) Newspaper Exemption

- A. Sales of newspapers are exempt from sales and use tax. The exemption extends to the tangible personal property that becomes an ingredient or component part of or is consumed or destroyed or loses its identity in the manufacture of newspapers.
- B. There is a two-part test for determining if a publication qualifies as a newspaper:
 - 1. First, the publication must be identifiable by its appearance, format and frequency as a newspaper. A newspaper is a publication that is:
 - (a) printed on newsprint, rather than on more durable paper;
 - (b) not bound;
 - (c) printed and distributed frequently, usually daily or weekly, as opposed to less frequent publication. A publication printed and distributed less frequently than monthly is presumed to not qualify for the exemption; and
 - (d) usually not limited to a single, specialized subject area.
 - 2. Second, at least ten percent of the printed material in a publication that meets the criteria of Reg. §1.9741(15)(B)(1) must consist of news of general or community interest, community notices, editorial comment, or articles by different authors. Advertising is not considered news, and is not included within the ten percent requirement. Note that a publication that does not meet the criteria of Reg. §1.9741(15)(B)(1) will never qualify for the exemption even if ten percent of its content consists of news.
- C. Newspapers and the materials consumed in producing newspapers are exempt whether or not the newspapers are sold or distributed without charge. In the case of a publication distributed without charge that does not qualify as a newspaper (such as a magazine), the purchase of the paper and supplies used to create the free publication is subject to sales and use tax because the materials are not purchased for resale. Where the printing process is performed by a third party, the third party collects tax on the entire cost of printing the publication, including materials and labor. If the third party is not registered to collect the Vermont sales tax, the distributor/vendor pays use tax on the full purchase price of the publication, including the materials and labor. A third party printer is entitled to an exemption for the materials under 32 V.S.A. § 9741(14) because the printing and production constitutes manufacturing.

Reg. § 1.9741(16)-1 Packaging Exemption

Sales of packing, packaging or shipping materials to manufacturers or distributors who use such materials for the packing, packaging, or shipping of tangible personal property for sale are exempt.

Reg. § 1.9741(16)-2 Definition of Packing, Packaging or Shipping Materials

“Packing, packaging or shipping materials” means the articles and devices used in packing, packaging or shipping tangible personal property such as containers, bags, labels, gummed tapes, bottles, drums, cartons, bubble wrap and sacks.

Items of returnable and reusable packaging are exempt from sales and use tax as long as the packaging has a limited life expectancy (not more than three years) and the item is used by a manufacturer or distributor to hold or contain or to pack and ship tangible personal property. Examples of exempt reusable and returnable packaging include pallets, reels and skids used for holding tangible personal property during shipment, beer kegs, and water containers. Each of these items may be returned to and reused by the manufacturer or distributor.

Reg. § 1.9741(16)-3 Definition of Manufacturer

"Manufacturer" means one who performs as a business an integrated series of operations that places tangible personal property in a form, composition, or character different from that in which it was acquired.

Reg. § 1.9741(16)-4 Definition of Distributor

"Distributor" means that person who purchases tangible personal property from a manufacturer and sells the same at wholesale. One who sells at retail is not a distributor.

Reg. § 1.9741(16)-5 Equipment

Equipment used for transportation is not exempt as packaging. An example of nonexempt equipment is a forklift used to transport tangible personal property around the premises of the manufacturer or distributor. Items that are not shipped with the tangible personal property are not exempt even if they are similar to exempt items. For example, specialized pallets used to move a product around a distributor's or manufacturer's warehouse are not exempt, although pallets used in shipping the product are exempt.

Reg. § 1.9741(16)-6 Sales to Persons Rendering a Service

Sales of packing, packaging or shipping materials to persons regularly engaged in rendering a service are taxable because such persons are neither manufacturers nor distributors.

Reg. § 1.9741(16)-7 Sales to Retail Stores

Sales of packing, packaging or shipping materials to retail stores are generally taxable because retail stores are neither manufacturers nor distributors. This is the case even if the retailer places the product in the packaging before it is offered for sale at retail. For example, a retailer buys flour in bulk, and packages the flour in ten pound bags that are displayed and offered for sale at its retail store. The flour bags are not exempt because they were not purchased by a manufacturer or distributor.

Although a manufacturer may make exempt purchases of packaging and shipping material that is used to package or ship products it manufactures, sales of packaging and shipping materials such as merchandise bags are not exempt when the manufacturer uses such materials to package items it sells directly to customers at retail.

Reg. § 1.9741(16)-8 Sales to Restaurants

Sales of products such as disposable cups, plastic or styrofoam food containers or other similar packing or shipping materials to caterers, hotels, restaurants and other eating and drinking establishments where food is consumed on or off the premises are taxable because such eating and drinking establishments are not manufacturers or distributors.

Reg. § 1.9741(16)-9 Exemption Certificate

Sales of packing, packaging, or shipping materials are taxable unless the purchaser provides the seller an exemption certificate.

Reg. § 1.9741(24)-1 Research or Development Exemption

Tangible personal property purchased for use or consumption directly and exclusively, except for isolated or occasional uses, in commercial, industrial or agricultural research or development in the experimental or laboratory sense is exempt from sales and use tax.

Reg. § 1.9741(24)-2 Definitions

For the purposes of this provision, the following definitions shall apply:

A. "Research or development" means a systematic study or search directed toward new knowledge or new understanding of a particular scientific or technical subject and the gradual transformation of this new knowledge or new understanding into an innovative product or process. Research or development must have as its ultimate goal:

1. the development of new products;
2. the improvement of existing products; or
3. the development of new uses for existing products.

“Research or development” must go beyond the state of knowledge in that field, to expand or refine its principles, and must develop new information that is applied toward development or significant improvement of a product, process, technique, or invention. It does not include the modification of a product merely to meet customer specifications unless the modification is carried out under experimental or laboratory conditions in order to improve the product generally or develop a new use for the product. Further, it does not include testing or inspection of materials or products for quality control, environmental analysis, testing of samples for chemical or other content, operations research, feasibility studies, efficiency surveys, management studies, consumer surveys, economic surveys, research in the social sciences, metaphysical studies, advertising, promotions, or research in connection with literary, historical, or similar projects. Research or development ends when assembly or production of the new or improved product or use of the changed process or technique begins.

- B. “Direct use” means those activities that are an integral part of research or development activities, including all steps of these activities, but not including secondary activities such as administration, general maintenance, product marketing, and other activities collateral to the actual research process.
- C. “Exclusive use” means use to the exclusion of all other uses except for other uses not exceeding four percent of total use.
- D. “Experimental sense” means work that is conducted through tests, trials, tentative procedures, or policies adopted under controlled conditions to discover, confirm, or disprove something doubtful.
- E. “Laboratory sense” means work that is conducted in a place equipped for experimental study in a science and providing an opportunity for experimentation, observation, or practice in a field of basic scientific or traditional physical science research.

Reg. § 1.9741(24)-3 Presumption of Exemption

Tangible personal property used directly and exclusively in research or development that does not qualify for a federal credit under Section 41 of the Internal Revenue Code, 26 U.S.C. § 41 shall be presumed nonexempt under this provision.

Reg. § 1.9741(25)-1 Agricultural Machinery and Equipment Exemption

Sales of agricultural machinery and equipment for use and consumption predominantly in the production for sale of tangible personal property on farms (including stock, dairy, poultry, fruit, and truck farms), orchards, nurseries, or in greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities for sale are exempt from the sales and use tax.

Reg. § 1.9741(25)-2 Definitions

For the purpose of this regulation:

- A. "Agriculture" means the science or act of producing crops, farm products and raising livestock. Agriculture does not include lumbering or the growing of trees for logging purposes. The cutting of trees, except for cutting of Christmas trees, is not considered agriculture.
- B. "Agricultural machinery or equipment" means machinery or equipment used in producing crops, obtaining dairy products, raising livestock, and in obtaining maple syrup for sale. It does not include supplies.
- C. "Machinery" means the assemblage of parts that transmit forces, motion and energy in a predetermined manner.
- D. "Equipment" means implements, capital in nature, ordinarily subject to depreciation, but not including supplies.
- E. Supplies are generally items of a non-depreciable, non-capital nature that are normally consumed within a year. Supplies include, but are not limited to, items such as brooms, brushes, buckets, shovels, and office materials such as ledger books and pens.
- F. Livestock includes cattle, sheep, goats, equines, fallow deer, red deer, reindeer, American bison, swine, poultry (including pheasant, chukar partridge, and coturnix quail), camelids and ratites, rabbits when raised for meat, cultured fish propagated by commercial fish farms and bees.
- G. "Farm" means an enterprise using land and improvements for agricultural and horticultural production for the sale of tangible personal property. Farms include, but are not limited to, enterprises that produce turf crops, forages and sod crops, grains and feed crops, maple syrup, dairy products, poultry and apiary products, livestock, fruits of all kinds including grapes, nuts and berries, vegetables, nursery, floral, ornamental and greenhouse products.

Farms do not include cooperatives and similar organizations that engage in marketing and related activities, commercial operations such as processing food or dairy products, cheese making, logging and lumbering, the operation of a stockyard or slaughter house, enterprises for the breeding or raising of dogs, cats and other pets, and birds, fish or any other animals that are intended for use in sporting or recreational activities such as hunting and fishing.

Reg. § 1.9741(25)-3 Predominant Use

- A. For agricultural equipment and machinery to qualify as being used "predominantly" in production for sale of tangible personal property on a farm, it must be used seventy-five percent or more of the time in the production for sale of tangible personal property on farms. It shall be rebuttably presumed that uses are not isolated or occasional if they total more than four percent of the time the machinery or equipment is operated. The exemption status is dependent upon the actual use of

such machinery and equipment; the machinery and equipment is not exempt solely on the basis that it is used on a farm.

- B. Tangible personal property that is incorporated into real property is not used in the production of farm products and so is not exempt. Materials used to construct barns, sheds, silos and permanent fences are not exempt as they are building materials, not machinery or equipment. Movable equipment is exempt if the item is not incorporated into real property and it is used for farm production. Examples of such equipment are: barn curtains and screens, adjustable headlocks, free-stall stations, calf gates, movable fence gates, portable or temporary calf housing, milking machines and temporary fencing systems.

Reg. § 1.9741(25)-4 Examples of Use in Farm Production

The following uses are considered uses in the production for sale of tangible personal property on farms. If the machinery or equipment is used at least seventy-five percent of the time for any of these uses, or a combination of these uses, the machinery and equipment is exempt from tax.

1. Machinery and equipment used to cause other property to become a constituent or component of a farm product; to cause other property to be consumed by productive animals; machinery and equipment used to till, plant, fertilize, foster plant growth or harvest; to feed and water livestock; and to administer medication to livestock, to maintain sanitary conditions or health conditions in the immediate area of agricultural production;
2. Machinery and equipment used to collect, convey or transport property used in production to an agricultural production site or to transport the finished product to a storage site on the farm and machinery used to collect manure
3. Machinery and equipment used to clean farm production equipment;
4. Machinery and equipment used to test and inspect the agricultural product;
5. Machinery and equipment used in agriculture to handle and preserve agricultural products upon the premises, and to prevent or deter the destruction, injury or spoilage of agricultural products, livestock or plants. This category includes but is not limited to property such as automatic cattle oilers used to groom farm animals so as to preserve their health, manure gutter cleaners, refrigerating devices used upon the premises to cool raw milk or to preserve perishable vegetables or other agricultural products, but does not include items such as fences, silos, and barns;
6. Machinery and equipment used to extract or separate an agricultural product from livestock, the soil or plants, including but not limited to harvesters, combines, binders, forage blowers, milking equipment, egg collecting equipment, pickers and feed handling equipment;
7. Replacement parts used to replace worn parts upon exempt machinery and equipment including but not limited to motors, belts, screws, bolts, cutting edges, tractor batteries, tractor tires, and air filters or gears;

Machinery and equipment used to convert animal waste or other farm byproducts into energy when that energy is used for agricultural purposes, except for isolated or occasional uses not to exceed twenty-five percent of total usage. Note, however, that machinery and equipment used to convert animal waste or other farm byproducts into energy for sale at retail may be exempt under the manufacturing exemption. *See* 32 V.S.A. § 9741(14); Reg. § 1.9741(14).

Reg. § 1.9741(25)-5 Examples of Uses of Machinery and Equipment Not in Use for Production of Tangible Property for Sale

The following uses are not uses in the production for sale of tangible personal property on farms. If the machinery or equipment is used more than twenty-five percent for the following uses, or a combination of these uses, the machinery and equipment is subject to tax.

1. Machinery and equipment purchased or used by one engaged in agriculture for use in the construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance, or improvement to real estate, even though the structure may house or otherwise contain equipment or other facilities used ~~directly and exclusively~~ in agriculture;
2. Machinery and equipment purchased or used for land reclamation, land clearing, landscaping, lawnmowing, snow removal and similar activities that are intended to improve or preserve real estate;
3. Machinery and equipment used in maintaining facilities including but not limited to general cleaning and maintenance of property not used in direct farm production, such as chain hoists and welding equipment.
4. Property used in managerial, marketing and sales or other non-operational activities including, but not limited to office furniture, supplies and equipment, textbooks and other educational materials, books and records, and all other property used in agricultural administration and management, and machinery and equipment used in advertising agricultural products for sale;
5. Property used in the exhibition of agricultural products or agricultural operations including, but not limited to blankets, halters, prods, leads, harnesses, dressings, ribbons, clippers and similar show or grooming and display equipment;
6. Property used to prevent or fight fires and equipment and supplies used for safety, accident prevention or first aid programs, even though such equipment or property is required by law;
7. Property used for the personal comfort or convenience of a person engaged in agriculture, or his or her family, employees, or business associates, such as beds, mattresses, blankets, tableware, stoves, refrigerators, and other equipment used in conjunction with the operation of a migrant labor camp, or facilities for agricultural employees;
8. Machinery and equipment used in making butter, sausage, canned goods, jellies, flour, juices, cheeses, ice cream and other like items. Note, however, that such machinery and equipment

may be exempt under the manufacturing exemption. *See* 32 V.S.A. § 9741(14); Reg. § 1.9741(14);

Reg. § 1.9741(25)-6 Nurseries

Machinery and equipment purchased by a person engaged in commercial nursery operations for use predominantly in the direct production of tangible personal property for sale is exempt. Included is machinery and equipment used in the production process of growing ornamental trees, shrubbery, vegetable plants, flowers, Christmas trees and fruit trees.

Reg. § 1.9741(25)-7 Agricultural Exemption Certificate

- A. A person engaged in the production for sale of agricultural products shall provide a completed agricultural exemption certificate to his or her supplier to cover purchases of exempt agricultural machinery and equipment.
- B. Sales that are not supported by a properly executed exemption certificate shall be deemed taxable retail sales.
- C. A blanket agricultural exemption certificate may be furnished to the seller to cover additional purchases of the same general type of agricultural machinery and equipment.
- D. Each sales slip or purchase invoice based on a blanket exemption certificate must show the name, address and federal identification number of the purchaser.

Reg. § 1.9741(26)-1 Residential Fuel Exemption

Sales of fuel used in a residence for domestic use are exempt. "Fuels" shall include electricity, oil, kerosene, natural gas, propane, wood, coal, and any similar product.

Reg. § 1.9741(26)-2 Definition of Residence

"Residence" shall mean any dwelling, apartment, mobile home or other place that is normally used as a living place and may be either a primary or secondary residence. "Residence" shall not include motels, hotels, inns, time shares, vacation clubs, nursing homes as defined in 33 V.S.A. § 7102, tourist homes, or similar housing arrangements.

Reg. § 1.9741(26)-3 Definition of Domestic Use

"Domestic use" includes heating of space or water, lighting, air conditioning, and the operation of appliances in a residence.

Reg. § 1.9741(26)-4 Collection of Tax

It shall be the responsibility of the seller of fuel to determine whether any sale is taxable or exempt, and to collect the sales tax on all taxable sales. All sales of fuel shall be taxable unless determined to be exempt in whole or in part in accordance with this regulation.

Reg. § 1.9741(26)-5 Presumption of Exemption

In making the determination required by this regulation, a seller shall be entitled to presume that sales of all fuels are exempt where all electricity or gas used at the property to which such fuel is delivered is billed at a residential rate under applicable regulations or tariffs established or approved by the Public Service Board.

Reg. § 1.9741(26)-6 Multiple Use

When a property is used for both exempt and nonexempt purposes and the fuel for such property is not separately metered, measured or purchased, the purchaser shall certify to the seller, at the seller's request, the portion of fuel purchased for domestic purposes and thus entitled to exemption. Such certification may be an estimate, based upon any reasonable method of estimation.

Reg. § 1.9741(26)-7 Area Lighting

Charges for "area lighting" which include a charge for the use of equipment as well as for the fuel used to operate such equipment shall be exempt from tax if used at a property used exclusively as a residence.

Reg. § 1.9741(27)-1 Exemption for Fuels Used Directly and Exclusively for Farming Purposes

Sales of fuel used directly and exclusively for farming purposes shall be exempt from sales tax. "Fuels" shall include electricity, oil, kerosene, natural gas, propane, wood, coal, and any similar product.

Reg. § 1.9741(27)-2 Definition of Farm

"Farm" means an enterprise using land and improvements for agricultural and horticultural production for the sale of tangible personal property. Farms include, but are not limited to such enterprises producing turf crops, forages and sod crops, grains and feed crops, maple syrup, dairy products, poultry and apiary products, livestock, fruits of all kinds including grapes, nuts and berries, vegetables,

nursery, floral, ornamental and greenhouse products. Livestock includes cattle, sheep, goats, equines, fallow deer, red deer, reindeer, American bison, swine, poultry (including pheasant, chukar partridge, and coturnix quail), camelids and ratites, rabbits when raised for meat, cultured fish propagated by commercial fish farms and bees.

Farms do not include cooperatives and similar organizations that engage in marketing and related activities, commercial operations such as processing food or dairy products, cheese making, logging and lumbering, the operation of a stockyard or slaughter house, enterprises for the breeding or raising of dogs, cats and other pets, and birds, fish or any other animals that are intended for use in sporting or recreational activities such as hunting and fishing.

Reg. § 1.9741(27)-3 Scope

Directly and exclusively used for farming purposes includes the operation of any equipment exempt under 32 V.S.A. § 9741(25). It also includes lighting in farm buildings or area lighting of farm property, heating of farm buildings, and operation of equipment incidental to the operation of the farm. Heating and lighting of farmstands on the premises of the farm is exempt if the farmstand sells primarily or exclusively products grown on the farm.

Reg. § 1.9741(27)-4 Collection of Tax

It shall be the responsibility of the seller of fuel to determine whether any sale is taxable or exempt, and to collect the sales tax on all taxable sales. All sales of fuel shall be taxable unless determined to be exempt in whole or in part in accordance with this regulation.

Reg. § 1.9741(27)-5 Certificate of Exemption

Purchasers claiming an exemption under the provisions of this regulation are required to provide to the seller a properly executed exemption certificate.

Reg. § 1.9741(27)-6 Multiple Use

When a property is used for both exempt and nonexempt purposes, the purchaser of fuel for such property, when the fuel is used for both exempt and nonexempt uses and is not separately metered, measured or purchased, shall certify to the seller, at the seller's request, the portion of fuel purchased for domestic purposes and thus entitled to exemption. Such certification may be an estimate, based upon any reasonable method of estimation.

Reg. § 1.9741(34)-1 Exemption for Fuel Used Directly or Indirectly in Manufacturing

Fuels used directly or indirectly in manufacturing tangible personal property for sale are exempt from sales and use tax. "Fuels" shall include electricity, oil, kerosene, natural gas, propane, wood, coal, and any similar product.

Reg. § 1.9741(34)-2 Definitions

Fuel is used directly in manufacturing if used for activities that qualify as direct manufacturing defined under 32 V.S.A. § 9741(14).

Fuel is used indirectly in manufacturing if used for the following purposes:

1. operation of machinery and equipment directly associated with production, such as pollution abatement equipment, equipment required by VOSHA/OSHA regulations, lighting or cranes for quarries or gravel pits, and other similar machinery and equipment;
2. receiving and storing raw materials;
3. testing quality control of products;
4. storing finished products at the production area up to initial shipping;
5. heating, cooling and lighting of the production area, of areas used for purposes 1 through 4 above, and of corridors, restrooms, and other spaces which are integral to the manufacturing area.

Reg. § 1.9741(34)-3 Nonexempt Activities

Fuel used in the following activities is not used directly or indirectly in manufacturing, and therefore not exempt under this provision:

1. administration;
2. sales or marketing;
3. retail operations, including storage at a retail outlet;
4. distribution operations;
5. ancillary activities such as meeting, dining, child care, automobile parking;
6. research and development. Note, however, that fuel used directly for research and development is exempt under 32 V.S.A. § 9741(24).

Reg. § 1.9741(34)-4 Determination of the Exempt Portion of Purchases

When there are both exempt and nonexempt uses of fuel, the taxpayer must accurately determine the amount of fuel that is exempt from sales and use tax. Acceptable means of such determination include the use of separate meters or fuel storage tanks. Taxpayers may also determine the percentage of floor space used primarily for qualified purposes and allocate usage according to the resulting percentage, provided floor space accurately reflects fuel usage. Taxpayers should maintain spec sheets, assets lists, detailed floor plans and any other necessary documentation to substantiate the exempt use of fuel, which information is subject to the Department's review upon

request. If the means described herein do not address a particular taxpayer's fuel usage, such Taxpayer may petition the Department for an alternate methodology that is acceptable to the Department.

Reg. § 1.9741(34)-5 Certificate of Exemption

A seller that has accepted from the purchaser a properly executed exemption certificate as set forth in 32 V.S.A. § 9745 and Reg. § 1.9745 shall not be required to collect tax on the items claimed as exempt. The certificate shall specify either that all purchasers are exempt or the percentage of the purchases that are taxable and the percentage that are exempt. A purchaser that submits an exemption certificate to a seller must have made a determination as required under Reg. § 1.9741(34)-4, and must maintain supporting information, which information shall be reviewed and updated, if necessary, every three years. As stated under Reg. § 1.9741(34)-4, this information is subject to review by the Department, and if deemed incomplete or inaccurate, any exemption certificate submitted by the taxpayer will be considered invalid, and the taxpayer will be liable for any unpaid tax, plus penalty and interest, as provided under 32 V.S.A. § 9777.

Reg. § 1.9741(34)-6 Example

XYZ corporation uses electricity to operate machinery that produces a product for sale, to operate office equipment and to provide lighting throughout its site. The site contains administrative offices, a warehouse for finished goods awaiting sale, and a production area.

The electricity purchased for use at the warehouse and in the production area, both for running the production equipment and for providing lighting, is exempt. Electricity purchased for use in the administrative offices is not exempt.

To determine the percentage of exempt and nonexempt electricity, XYZ corporation observes the electricity used in similarly sized and equipped offices and determines that only 15 percent of its electricity is used in portions of the site not primarily used for manufacturing. XYZ corporation gives its supplier an exemption certificate claiming an exemption for 85 percent of the electricity.

Reg. § 1.9741(51) Specified Forestry Equipment and Parts

The following specified forestry equipment and repair parts for these pieces of equipment, used in timber cutting, timber removal and the processing of timber and solid wood forest products intended to be sold at retail are exempt from tax: skidders with grapple and cable, feller bunchers, cut-to-length processors, forwarders, delimiters, loader slashers, log loaders, whole-tree chippers, stationary screening systems, and firewood processors, elevators, and screens.

Other machinery and equipment not listed here not exempt from tax even if used for the forestry purposes listed in 32 V.S.A. § 9741(51).

Reg. § 1.9743 Organizations Not Covered

A. Sales to Exempt Organizations

1. Any sale to the federal government, any of its agencies and instrumentalities or to the State of Vermont or any of its agencies, instrumentalities, public authorities, public corporations (including a public corporation created pursuant to agreement or compact with another state or states) or its political subdivisions such as counties, cities and towns, is exempt from the sales tax. To qualify for the exemption, payment must be received directly from the governmental agency, instrumentality, public authority, public corporation or political subdivision. Sales to states other than Vermont or to their agencies, instrumentalities, public authorities, public corporations or political subdivisions are not exempt.
2. Any sale to an entity that qualifies for exempt status under the provisions of section 501(c)(3) of the United States Internal Revenue Code and any sale to agricultural organizations qualified for exempt status under section 501(c)(5) when presenting agricultural fairs, field days or festivals, are exempt. Such organizations shall obtain an exemption certificate from the Commissioner. Sales to other 501(c) entities (such as social and recreational clubs, chambers of commerce, and fraternal organizations) are subject to tax.
3. Sales of alcoholic beverages to the State of Vermont or any of its agencies, instrumentalities, public authorities, public corporations (including a public corporation created pursuant to agreement or compact with another state or states) or its political subdivisions such as counties, cities and towns, are not exempt from the sales tax. 32 V.S.A. § 9743(1).
4. Sales of building materials and supplies are exempt only if they meet the requirements set forth in 32 V.S.A. §9743(4). Sales of items that are not consumed, employed, or expended in projects described by 32 V.S.A. §9743(4) are subject to tax, as these items are not, by definition, building materials or supplies. Blueprints are not considered “supplies” for the purposes of this exemption.

B. Sales by Exempt Organizations

1. Any sale by a federal or state entity referenced in subsection (A)(1) above, except charges for admission to a place of amusement (*see* subsection C, below), is not taxable except when the entity makes sales of tangible personal property, services or specified digital products transferred electronically to an end user that are in competition with other persons making similar retail sales. In that event, the sales are subject to tax.
2. Any sale by a 501(c)(3) organization that qualifies under subsection (A)(2) above, except charges for admission to a place of amusement (*see* subsection C, below), is exempt if the total

sales of property or services which would otherwise be subject to sales tax if not sold by an exempt entity did not exceed \$20,000 in the prior year. The \$20,000 threshold shall include only those sales of items or services taxed under Chapter 233 of Title 32 and not covered by another tax exemption. Charges for admissions to places of amusement are not included in calculating the \$20,000 threshold. The term “prior year” means the exempt organization’s financial reporting year, which may be a fiscal year or calendar year. The organization shall maintain records and shall, upon request, provide certification to the Department of the prior year’s sales to determine whether the sales account should be activated. The organization will not be required to collect sales tax in the first year of its operation.

Examples:

Sales of textbooks by a school or college that is a 501(c)(3) organization are exempt from the tax only if the school’s gross sales of tangible personal property and services that would otherwise be subject to tax did not exceed \$20,000 in the previous year.

Sales of textbooks by state schools and colleges are taxable regardless of the \$20,000 threshold because the state must collect tax on sales of tangible personal property and services that are in competition with other persons making similar retail sales.

3. Sales of alcoholic beverages by the State of Vermont or any of its agencies, instrumentalities, public authorities, public corporations (including a public corporation created pursuant to agreement or compact with another state or states) or its political subdivisions such as counties, cities and towns, are not exempt from the sales tax. 32 V.S.A. § 9743(1).

C. Charges on Receipts From Admission to Places of Amusement

Some charges made by or to a 501(c)(3) organization or by or to a Vermont or federal government entity for admission to places of amusement are exempt. A “place of amusement” is broadly defined to mean any place where any facilities for entertainment, recreation, amusement or sports are provided. 32 V.S.A. § 9701(11); *see also* Reg. § 1.9771(4)-1.

For the admission charge to be exempt from sales tax, the 501(c)(3) organization or Vermont or federal government must sustain the full financial loss or gain of the amusement. An organization or entity may not claim the exemption when the amusement is jointly produced or presented with a non-qualifying individual or entity. That is because the tax exemption does not extend to the non-qualifying individual or entity.

The charge is exempt only if each of the following criteria is met:

1. the organization bears the entire risk of loss of the production;
2. no other person shares in the profits from the production;
3. no other person is party to the contracts with performers of the production;
4. the organization is solely responsible for collection of all receipts for the production; and

5. the organization is solely responsible for payment of all expenses associated with the production and accounts for receipts and expenses in its books and records.

This exemption is not available for entertainment charges for admission to a live performance by an organization whose gross sales of entertainment charges by or on behalf of an organization for admission to live performances in the prior calendar year exceeded \$100,000.00.

Reg. § 1.9745-1 Certificate of Exemption

- A. All receipts are presumed to be subject to tax until the contrary is established, and the burden of proving that any receipt or amusement charge is not taxable shall be on the vendor. In the case of use-based exemptions, entity-based exemptions, and exempt sales for resale (*see* Reg. § 1.9741; Reg. §1.9743; and Reg. 1.9701(5)-1), the following apply:
 1. The seller shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase.
 2. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.
 3. The seller shall use the standard form for claiming an exemption electronically as adopted by the Streamlined Sales Tax Project (SSTP) governing board.
 4. The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.
 5. The seller shall maintain proper records of exempt transactions and provide them to the Commissioner upon request. *See* Reg. § 1.9709.
 6. In the case of drop shipments, a third party vendor (*e.g.* drop shipper) may claim a resale exemption based on an exemption certificate provided by its customer/reseller or any other acceptable information available to the third party vendor evidencing qualification for a resale exemption, regardless of whether the customer/reseller is registered to collect sales and use tax in the state where the sale is sourced.
- B. The Commissioner shall relieve sellers that follow the requirements of this section from the tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and hold the purchaser liable for the nonpayment of tax.

If the vendor fails to collect tax, it is responsible for the payment of tax for sales improperly exempted unless it accepted an exemption certificate from the purchase in good faith. An exemption certificate is receive at the time of sale in good faith when all of the following conditions are met:

1. The certificate contains no statement or entry which the seller knows or has reason to know is false or misleading;

2. The certificate is signed, dated and complete (all applicable sections or fields are completed); and
 3. The property purchased is of a type ordinarily used for the state purpose or the exempt use is explained. For sales for resale, the property purchased is of a quantity and type ordinarily purchased for resale.
- C. This relief from liability does not apply to a seller who fraudulently fails to collect tax; to a seller who solicits purchasers to participate in the unlawful claim of an exemption; to a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when (1) the subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller and (2) the state in which that location resides provides an exemption certificate that clearly and affirmatively indicates (graying out exemption reason types on the uniform form and posting it on a state's website is an indicator) that the claimed exemption is not available in that state.
- D. The Commissioner shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the Streamlined Sales Tax Agreement (Agreement) within 90 days subsequent to the date of sale.
1. If the seller has not obtained an exemption certificate or all relevant data elements as provided in this regulation, the seller may, within 120 days subsequent to a request for substantiation by the Commissioner, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith.
 2. A purchaser shall update exemption certificate information at any time such information has changed and is no longer accurate. In addition, the Commissioner may require purchasers to update exemption certificate information or reapply for exemption from tax.
 3. The Commissioner shall relieve a seller of the tax otherwise applicable if it obtains a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. Notwithstanding section (D)(2) above, the Commissioner shall not request from the seller renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this section a recurring business relationship exists when a period of no more than twelve months elapses between sales transactions.

Reg. § 1.9745-2 Direct Payment Permit

“Direct payment permit” (or “direct pay permit”) means a permit issued by the Commissioner that allows a holder of such permit to accrue and pay sales and use taxes directly to the department.

- A. Applicants for a direct payment permit must apply in writing to the Commissioner. The application shall be on a form, whether electronic or paper, furnished by the Commissioner that shall contain the applicant's name, address, the location of the place or places of business for which the applicant intends to make direct payment of tax, and the applicant's business registration

number. In the case of a new registration, the Commissioner shall issue an identifying registration number.

B. Qualification Process and Requirements

1. Applicants for a direct payment permit shall demonstrate their ability to comply with sales and use tax laws and reporting and payment requirements. Applicants must provide a description of the accounting system or systems that they will use, and demonstrate that such system or systems will reflect the proper amount of tax due.
2. Applicants must establish a business purpose for seeking a direct payment permit and must demonstrate how direct payment will benefit tax compliance. For example, the utilization of direct payment authority should accomplish one or more of the following:
 - (a) Reduce the administrative work of determining taxability; collecting, verifying, calculating and/or remitting the tax;
 - (b) Provide for improved compliance with Vermont tax law;
 - (c) Provide for accurate compliance in circumstances where determination of taxability of the item is difficult or impractical at the time of purchase;
 - (d) Provide for more accurate calculation of the tax where new or electronic business processes such as electronic data interchange, evaluated receipts settlement, or procurement cards are utilized;
 - (e) Provide for more accurate determination and calculation of tax where significant automation and/or centralization of purchasing and/or accounting processes have occurred and the applicant must comply with the laws and regulations of multiple state and local jurisdictions.
3. The Commissioner or the Commissioner's designee shall review all permit applications. The review of applications shall be conducted in a timely manner so that applicants receive notification of authorization or denial within ninety (90) days of the date the Commissioner or designee receives the application; however, if additional documentation or discussion is required the Commissioner shall notify the taxpayer prior to the end of the ninety-day period.

- C. Each holder of a valid direct payment permit shall accrue, report and pay directly to the Commissioner the taxes due for all transactions subject to tax for which a direct payment permit applies. *See* 32 V.S.A. § 9775 ("Returns"). Taxes for which the direct payment permit is used shall be considered due and payable on the sales and use tax return next due following the date on which a determination of taxability is, or in the exercise of reasonable care should be, made for a given transaction, unless otherwise provided by written agreement between the taxpayer and the Commissioner.

D. Certain Transactions Not Permitted.

1. A holder of a direct payment permit shall not use such permit in connection with purchases that are not subject to the sales and use tax, including, but not limited to:
 - (a) purchases of taxable meals or beverages;
 - (b) purchases of taxable lodging or services related thereto; and
 - (c) purchases of motor vehicles, whether or not the motor vehicles are subject to the motor vehicle purchase and use tax.

2. A holder of a direct payment permit shall not use such permit in connection with the following transactions that are typically subject to the sales and use tax:
 - (a) purchases of admissions to places of amusement, entertainment or athletic events, or the privilege of use of amusement devices;
 - (b) purchases of telecommunication services, and
 - (c) other taxable purchases as may be agreed to between the holder of the direct payment permit and the Commissioner.

- E. The holder of a direct payment permit shall furnish a copy of the direct payment permit or may provide a blanket certificate of exemption to a seller who sells taxable items to the permit holder. In certain circumstances, it may be necessary for the permit holder to pay tax directly to the seller. Where tax is paid directly to the seller and the Commissioner and permit holder agree, the holder may maintain accounting records in sufficient detail to show in summary, and in respect to each transaction, the amount of sales or use taxes paid to sellers in each reporting period.

- F. Either the direct payment permit or blanket exemption certificate shall cover all future sales of taxable items to the permit holder and relieve the seller of the obligation of collecting sales tax from the permit holder on qualifying transactions. Sellers who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in such manner that the amount involved and identity of the purchaser may be ascertained.

- G. A direct payment permit is not transferable, and its use may not be assigned to a third party. Direct payment permits may be revoked by the Commissioner at any time whenever the Commissioner determines that the person holding the permit has not complied with the provisions of this regulation or that the revocation would be in the best interests of the state. Such revocation shall be in accordance with 32 V.S.A. § 9816.

REG. SEC. 1.9771 IMPOSITION, RATE AND PAYMENT

Reg. § 1.9771(3)-1 Tax on Fabrication

Section 9771(3) imposes the sales tax on the charge for producing, fabricating, printing or imprinting of tangible personal property for consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, printing or imprinting.

Reg. § 1.9771(3)-2 Activity That Constitutes Fabrication

- A. Fabrication is similar to manufacturing because in most instances a new part or shape is produced or manufactured, material is added or taken away, or appearance or makeup of the item is altered.
- B. Custom manufacturing is not fabrication unless the customer directly or indirectly supplies the materials used. A separate charge for the labor of producing the product sold is part of the sales price. *See* Reg. § 1.9701(4).
- C. Examples:
 - 1. John contracts with Jim to make draperies. Jim charges John \$50 for the material used and \$100 for the labor. This does not constitute fabrication because John did not provide the material directly or indirectly. Jim collects tax on the \$150 sales price.
 - 2. John purchases materials for draperies from Jim for \$50 and contracts with Joan to create the draperies from the material for \$100. Jim collects tax from John on the \$50 sales price of the material, and Joan collects tax from John on the \$100 fabrication charge.
 - 3. John purchases material for draperies from Jim for \$50, then separately contracts with Jim to create the draperies from the material for \$100. It is not necessary to determine whether there were two separate transactions; Jim collects tax on the full \$150 (tax on the sales price of the material, and tax on the fabrication charge).
 - 4. John brings Jim material he received as a gift and contracts with Jim to create draperies from the material for \$100. Jim collects tax on the \$100 fabrication charge.

Reg. § 1.9771(3)-3 Test of Taxability

- A. If labor is expended in producing a new or different item, the tax applies to the labor charge.
- B. If labor is expended in repairing or altering existing property belonging to another to restore that item to its original condition or usefulness without producing new parts, the tax does not apply to the labor charge.
- C. “New item” means new insofar as the ultimate purchaser (first retail sale) is concerned. Work may be performed at various stages before the item is ready for use by the ultimate purchaser. Similarly, the cost of repairing, remodeling or reconditioning an item is subject to tax if a new or different item from the original is produced by such services.

- D. The exemptions available for sales of tangible personal property are also available for fabrication charges. For example, a charge for fabrication of an article of clothing is not taxable.

Reg. § 1.9771(3)-4 Examples

Fabrication subject to the tax includes, but is not limited to:

job printing, engraving (jewelers included), lettering memorials and monuments, silk screen printing (with the exception of printing on items not subject to sales tax, such as clothing), custom drapery, taxidermy, sign making (with the exception of sign making on property not subject to sales tax, such as real estate or motor vehicles), remaking bearings (enlarging the diameter of the bearing to accommodate a larger size shaft or turning down the shaft to a smaller diameter) and machine work to make new parts or to change existing parts into new items.

Reg. § 1.9771(4)-1 Receipts From Admissions to Places of Amusement

A tax is imposed on the receipts from charges for admission to places of amusement, 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, and charges for access to any gaming or amusement machine, apparatus or device, excluding video game, pinball, musical, vocal or visual entertainment machines that are operated by coin, token or bills. 32 V.S.A. § 9771(4). For the purpose of this regulation, “amusement charge” means the charge for an admission to a place of amusement or for a service taxed under this subsection.

- A. “Place of amusement” is broadly defined to mean any place where any facilities for entertainment, recreation, amusement or sports are provided. 32 V.S.A. § 9701(11).

Examples include, but are not limited to: (1) places where athletic events, exhibitions, dramatic and musical performances are held, or where motion pictures are shown; (2) athletic facilities or gyms, golf courses and ski areas, and (3) places where gaming or amusement machines, apparatus or devices are available.

- B. The tax is imposed on the right to admission or to the service. There is no deduction for lack of use or non-attendance unless the seller issues a refund to the customer in cash or a credit.
- C. Service charges, cover charges or other subsidiary charges are considered part of the amusement charge and are taxable. Charges for membership, including dues, initiation fees and other charges made by organizations or clubs are considered amusement charges if the primary purpose of the membership is access to a place of amusement.
- D. Taxable amusement charges include, but are not limited to:

1. Charges to attend athletic and sporting events including baseball, football, basketball and hockey games, boxing and wrestling events, races, motor sport events, rodeos and derbies;
2. Charges for the use of health clubs and athletic facilities including gymnasiums, tennis or handball courts, swimming pools, saunas, hot tubs and steam baths, skating rinks, shooting ranges, golf courses, driving ranges and practice greens, batting cages, bowling alleys, billiard halls, campgrounds, and ski areas;
3. Charges in the form of dues, fees or season tickets that entitle a person to club or organization membership privileges where the principal or sole privilege of such membership is the right to admission to particular performances or to a particular place for entertainment, recreation or amusement;
4. Charges for admission to observatories, zoos, and museums (admission charges to nonprofit museums, however, are exempt under 32 V.S.A. § 9741(2));
5. Charges for admission to tent shows, circuses, carnivals, celebrations, festivals, dances and balls, bingo halls, craft fairs, flea markets, collector shows (for example, gun, antique, car);
6. Charges for sleigh or buggy rides, airplane, helicopter, boat, and glider rides where the purpose is amusement rather than transportation;
7. Charges for pleasure rides of all kinds commonly conducted at amusement parks, fairs, circuses, carnivals and street festivals, as well as charges for the use of devices and games for testing skill or strength such as shooting galleries, striking machines and other similar machines most commonly found at fairs, circuses or carnivals;
8. Charges for tours of manufacturing or other facilities;
9. Cover charges for restaurants or cabarets providing entertainment;
10. Charges for the use of riding trails, tracks or similar facilities for skiing, horseback riding, bicycling, snowboarding, skating, canoeing, kayaking, or for using ATVs, snowmobiles, motorcycles, or other recreational equipment. (Where the seller makes a separate charge for use of the equipment, that charge is taxable as a rental of tangible personal property, rather than as an amusement charge.)

E. The following non-exclusive list is illustrative of charges that are not taxable as amusement charges:

1. Charges for classes or instruction in athletics or recreation, or in the use of athletic or recreational equipment, that may allow access to a recreational facility solely for the purpose of the instruction. If the class includes access to the recreational facility beyond the scope of that required for the class or instruction, however – for example, continued access to a ski area or golf course for the remainder of the day after completion of the class or instruction – the charge must be allocated between the non-taxable instruction and the taxable charge for use of the facility. If charges for admission to a place of amusement include optional access to classes or

instruction, the full charge is taxable. For example, a gym membership charge is fully taxable even though a member may choose to take aerobics or other instruction at no additional cost to the member. If the gym offers classes or instruction for an optional cost above the charge for membership, and such cost is separately stated and charged, the additional fee is not taxable;

2. Charges that constitute dues paid to fraternal, civic or service organizations even though the price paid for dues entitles the member to use whatever facilities for recreation or amusement that may be available. (If the organization makes a separate charge in addition to the dues for the use of such facilities, the charge is subject to tax);
3. Charges for the use of video games, pinball, musical, vocal or visual entertainment machines operated by coin, token or bill. The exemption applies only to the money or token that actually operates the machines. (A cover charge or other payment required for the use of the machines is an amusement charge and is taxable.)

F. The following amusement charges are exempt pursuant to other statutory provisions:

1. Fees and charges paid for admission to or use of federal, state or municipal recreation areas and facilities, including swimming pools. 32 V.S.A. § 9741(18);
2. Charges for admission to non-profit museums. 32 V.S.A. § 9741(20);
3. Amusement charges charged by or paid to organizations expressly excluded from the tax under 32 V.S.A. § 9743 (“Organizations not covered”); *see also* Reg. § 1.9743.

Reg. § 1.9771(4)-2 Multiple Location Admissions

In those instances where tickets, passes, vouchers or any other right entitle purchasers to choose an admission location or multiple admission locations from two or more places of amusement, the charge for each individual admission is considered a separate and distinct charge that is received at the place of amusement where the ticket, pass, voucher, or right is redeemed.

The seller may collect the tax only on the portion of the charge attributable to the right to access to the Vermont facility as follows:

- A. The seller shall initially determine the charge attributable to the Vermont facility or facilities by allocating the proportion of the total charge that is reasonably anticipated to be used in Vermont, as compared to the reasonably anticipated use of all facilities for which the charge provides access. The seller shall base the estimate of reasonably anticipated use on past experience, adjusted for changes in marketing or facilities that can be expected to result in a different proportion for the current year.
- B. The seller may make the charge on a "tax included" basis if the Commissioner grants such approval pursuant to 32 V.S.A. §9708(b). Alternatively, the sales tax may be separately stated on the charge for the Vermont facilities.

C. The seller shall perform a reconciliation after close of its fiscal year. The reconciliation shall determine the charge attributable to the Vermont facilities by comparing the actual use of the Vermont facilities to the actual use of all facilities during the year as a proportion of the total charges.

D. The difference between the Vermont taxable sales as determined by the reconciliation and the amount previously reported in the initial allocation shall be reported as sales for the period including the second month after the close of the seller's fiscal year.

Reg. § 1.9771(5)-1 Telecommunications Service

Vermont sales and use tax is imposed on all telecommunications service, as defined in 32 V.S.A. § 9701(19), except for paging service, private communications service, value-added non-voice data service, and coin-operated telephone service. Vermont sales tax is not imposed on ancillary services, as defined in 32 V.S.A. § 9701(42), except for directory assistance service.

See also Reg. § 1.9701(8)-6 (“Telecommunications Sourcing Definitions”); 32 V.S.A. § 9701(43) (definition of “Telecommunication nonrecurring charges”).

A. Taxable Telecommunications Services

Taxable telecommunications services include the following defined services:

1. “800 service” means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name “800”, “855”, “866”, “877”, and “888” toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.
2. “900 service” means all inbound toll telecommunications service purchased by a subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or live service. “900 service” does not include the charge for: collection services provided by the seller of the telecommunications services to the subscriber, or services or product sold by the subscriber to the subscriber’s customer. The service is typically marketed under the name “900” service, and any subsequent numbers designated by the Federal Communications Commission.
3. “Fixed wireless service” means a telecommunications service that provides radio communication between fixed points.
4. “Mobile wireless service” means a telecommunications service that is transmitted, conveyed or routed regardless of the technology used, where the origin and/or termination points of the transmission, conveyance or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.
5. “Prepaid calling service” means the right to access exclusively telecommunications services which must be paid for in advance and which enables the origination of calls using an access

number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

6. “Prepaid wireless calling service” means a telecommunications service that provides the right to utilize a mobile wireless service as well as other non-telecommunications services including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount.

B. Non-taxable Telecommunications Services

The following telecommunications services are not subject to the tax:

1. “Paging service” means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmission may include messages and/or sounds. 32 V.S.A. § 9701(38).
2. “Private communications service” means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and other associated services that are provided in connection with the use of such channel or channels. 32 V.S.A. § 9701(39).
3. “Value-added non-voice data service” means a service that otherwise meets the definition of telecommunication services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing. 32 V.S.A. § 9701(40).
4. “Coin-operated telephone service” means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate. 32 V.S.A. § 9701(41).

Reg. § 1.9771(5)-2 Ancillary Services

Vermont sales and use tax is not imposed on ancillary services, as defined in 32 V.S.A. § 9701(42), except for directory assistance service.

A. Taxable Ancillary Service

1. “Directory assistance” means an ancillary service of providing telephone number information, address information, or both. *See* 32 V.S.A. § 9701(44).

B. Non-taxable Ancillary Services

Non-taxable ancillary services include the following:

1. “Conference bridging service” means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the “telecommunications services” used to reach the conference bridge.
2. “Detailed telecommunications billing service” means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.
3. “Vertical service” means an ancillary service that is offered in connection with one or more “telecommunications services,” which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including “conference bridging services.”
4. “Voice mail service” means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any “vertical services” that the customer may be required to have in order to utilize the voice mail service.

Reg. § 1.9771(8) Specified Digital Products Transferred Electronically

Specified digital products transferred electronically to an end user are subject to the sales tax.

The retail sale of “digital code” is subject to the tax. “Digital code” means a code which provides a purchaser with a right to obtain one or more “specified digital products” or products “transferred electronically” to which the digital code relates. A “digital code” may be obtained by any means, including email or by tangible means regardless of its designation as “song code,” “video code” or “book code.”

See 32 V.S.A. § 9701(45) (definition of “transferred electronically”); 32 V.S.A. § 9701(46) (definition of “specified digital products”); 32 V.S.A. § 9701(47) (definition of “end user”); Reg. §§ 1.9701(45); 1.9701(47).

Reg. § 1.9772 Amount of Tax to be Collected

Effective Date of Rate Changes for Streamlined Sales Tax Registrants and Sellers That Bill Charges Subsequent to the Time of Sale:

- A. In the event of an increase in the sales and use tax rate, the new rate shall apply to the first billing period starting on or after the effective date of the rate change.
- B. In the event of a decrease in the sales and use tax rate, the new rate shall apply to bills rendered on or after the effective date of the rate change.

Reg. § 1.9773 Imposition of Compensating Use Tax

- A. The use tax is imposed on the user of tangible personal property and specified digital products transferred electronically to an end user that have not been or will not be subject to the sales tax, or are not otherwise exempted by law, as provided under this Chapter.
- B. Items manufactured, processed or assembled by the user are subject to the use tax if items of the same kind of tangible personal property are offered for sale by him or her in the regular course of business.

No use tax liability is incurred if the use of such items does not exceed the mere storage or retention until the item is sold, or the withdrawal from storage of such items for “demonstrational or instructional purposes.”

“Demonstrational or instructional purposes” shall not include:

- 1. The use of such items in the day-to-day operations of the business;
- 2. The personal use of such items by employees or others; and
- 3. The use of such items where the user lists the items as assets on his or her books and records, whether or not the listed items are expensed or capitalized, even if the capitalization is recaptured should the items be subsequently sold.

Reg. § 1.9775 Returns

- A. Sellers shall file a single return for Vermont and all local option tax jurisdictions for each taxing period on a form prescribed by the Commissioner.
- B. Whether or not registered under the Agreement, sellers may file a simplified return electronically.
- C. Streamlined Sales Tax Agreement Definitions
 - 1. “Certified Service Provider” (“CSP”) means an agent certified under the Agreement to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.
 - 2. “Certified Automated System” (“CAS”) means software certified under the Agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.
 - 3. “Model 1 Seller” means a seller registered under the Agreement that has selected a CSP as its agent to perform all the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

4. “Model 2 Seller” means a seller registered under the Agreement that has selected a CAS to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.
 5. “Model 3 Seller” means a seller registered under the Agreement that has sales in at least five Agreement member states, has total annual sales revenue of at least five hundred million dollars (\$500,000,000), has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.
 6. “Model 4 Seller” means a seller registered under the Agreement that is not a Model 1 Seller, a Model 2 Seller or a Model 3 Seller.
- D. Certified Service Providers must file in this state a simplified return electronically on behalf of Model 1 Sellers on a monthly basis.
- E. Model 2 and Model 3 Sellers must file a simplified return electronically in this state monthly unless they have indicated that they anticipate making no sales in the state.

Reg. § 1.9776 Payment of Tax

- A. Sellers shall remit payment with the filing of each return. Payment may be made electronically by the use of ACH Credit and ACH Debit. In the event an electronic fund transfer by either of these methods fails, a same day payment may be made using Fed Wire.
- B. Sellers and CSPs shall not be held liable for having charged and collected the incorrect amount of sales or use tax resulting from the seller or CSP relying on erroneous data provided by the Vermont Department of Taxes in its published taxability matrix or rates and boundaries database.

Reg. § 1.9778 Collection of Compensating Use Tax

Every seller of tangible personal property, services or specified digital products transferred electronically to an end user who holds a license and who makes sales of property, services or specified digital products transferred electronically to an end user, the use of which is subject to tax, shall at the time of making the sales, collect the compensating use tax from the purchaser. The use tax required to be collected by the seller constitutes a debt owed by the seller to the state and shall be paid at the same time and in the same manner as the sales tax. The provisions of 32 V.S.A. § 9708 with respect to unlawful advertising shall apply to use taxes to be collected by such sellers. Sellers not holding licenses shall not collect the use tax.

Reg. § 1.9780 Bad Debt

A. Where the seller or person required to collect tax is unable to collect accounts receivable in connection with which he or she has already remitted the tax to the Commissioner, that person or seller may apply to the Commissioner for a refund or credit. Bad debt shall be defined as in Section 166 of the Internal Revenue Code. 26 U.S.C. § 166.

B. The amount recoverable for bad debt shall not include financing charges or interest, sales or use taxes charged on the purchase price, uncollectable amounts on property that remain in the possession of the seller until the full purchase price is paid, expenses incurred in attempting to collect any debt, and repossessed property.

C. A claimant seeking recovery for bad debt shall deduct the debt on the return for the period during which the bad debt is written off as uncollectable in that claimant's books and records and is eligible to be deducted for federal income tax purposes. If the claimant is not required to file federal income tax returns, the claimant may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectable in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if required to file a federal income tax return.

D. If a claimant takes a deduction for bad debt, and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.

E. If the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, the claimant may file a refund claim with the Commissioner in accordance with 32 V.S.A. § 5884. The three-year limitations period shall be measured from the due date of the return on which the bad debt could first be claimed.

F. A CSP (Certified Service Provider) as defined at Reg. § 1.9775(D)(1) which has assumed filing responsibilities on behalf of the vendor may claim, on the seller's behalf, any bad debt allowance provided in this regulation. The CSP must credit or refund the full amount of any bad debt allowance or refund received to the seller.

G. For the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges. If the claimant's books and records support an allocation of bad debts among several states, the Commissioner shall allow the allocation.

Reg. § 1.9781 Refunds

Upon written request by the taxpayer, the Commissioner shall refund or credit any tax, penalty or interest erroneously, illegally or unconstitutionally collected by or paid to the Commissioner, within three years from the date the return was required to be filed, subject to the limitations listed below. Any request for refund must contain supporting documentation, whether in the form of invoices, canceled checks or other information sufficient to determine the refund amount. Refund requests containing inadequate or inaccurate information will be denied in full.

- A. A seller required to collect the tax, who has actually collected and paid over the tax to the Commissioner, may request a refund of any tax, penalty or interest erroneously, illegally or unconstitutionally collected by or paid to the Commissioner, provided that the request is made within three years of the date the tax was paid to the seller by the customer. The Commissioner shall not refund to the seller the amount requested unless the seller conclusively establishes that the amount has been repaid by the seller to the customer who incurred the tax.
- B. A purchaser of goods or services subject to sales tax may, within three years from the date the return was required to be filed, request a refund of any tax, penalty or interest erroneously, illegally or unconstitutionally paid. A purchaser who first seeks a refund directly from the seller retains the right to petition for a refund directly from the Department. *See* 32 V.S.A. § 9703(d). A purchaser shall not be entitled to a refund from the Department where the seller has refunded the tax to the purchaser. In the case where a refund request to the seller is pending, a purchaser may preserve his or her right to a refund from the Department by filing a refund request with the Department within the limitations period, containing such information necessary to determine the validity of the request, and expressly disclosing that a request for refund has been made to the seller.
- C. No refund or credit shall be allowed to any person of any tax, interest or penalty that has been determined to be due pursuant to the provisions of 32 V.S.A. § 9777 where the person has had a hearing or has had an opportunity for a hearing and failed to avail himself or herself of the remedies of the law, unless it is found that such determination was erroneous, illegal, unconstitutional or otherwise improper.
- D. Any taxpayer aggrieved by the denial of his or her application for refund by the Commissioner may within thirty days of the mailing of notice of denial of the application for refund appeal to the superior court by filing a petition as prescribed by 32 V.S.A. § 9817.

REG. SEC. 1.138(a)(2) LOCAL OPTION SALES TAX

Reg. § 1.138(a)(2) Local Option Sales Tax

- A. Except as provided in Reg. § 1.138(a)(2)(B) below, local option sales tax rate changes shall take effect on the first day of a calendar quarter after sixty (60) days have passed following notification to sellers or certified service providers (CSPs) of the rate changes.
- B. Local option sales tax rate changes shall apply to purchases from printed catalogs on the first day of a calendar quarter after 120 days have passed following notification to sellers or CSPs of the rate changes.
- C. Local jurisdiction boundary changes shall take effect on the first day of a calendar quarter after sixty (60) days have passed following notification to sellers or CSPs of the boundary changes.
- D. Sellers or CSPs may apply the lowest combined state and local option tax rate in a nine-digit zip code if the area includes more than one tax rate. If a seller or CSP is unable to determine the applicable rate and jurisdiction using an address-based database record after exercising due diligence, the seller or CSP may apply the nine digit zip code designation applicable to a purchase.

If a nine digit zip code designation is not available for a street address or if a seller or CSP is unable to determine the nine digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or CSP may apply the rate for the five digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or CSP has exercised due diligence if the seller or CSP has attempted to determine the tax rate and jurisdiction by utilizing software approved by the SSTP governing board that makes this assignment from the street address and zip code information applicable to the purchase.

- E. Sellers and CSPs will be relieved of liability to the state or local jurisdiction for collecting an incorrect amount of tax as a result of relying upon erroneous data provided by the State of Vermont in the rates and boundaries database accessible through the Agreement central registration website or the Department's website.
- F. Local option sales tax is collected on a destination sales basis.
 - 1. A vendor of tangible personal property located within the borders of a Local Option Sales Tax town, and any other registered vendor that delivers or sends items to a Local Option Sales Tax town must collect Local Option Sales Tax (1%) on sales that are subject to sales tax.
 - 2. For admissions to places of amusement, the admission charge is destination-based. If the venue is in a local-option town, local option sales tax must also be collected regardless of the location of the ticket seller.