New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division

TSB-A-08(21)S
Sales Tax
April 30, 2008

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. S070320A

On March 20, 2007, the Department of Taxation and Finance received a Petition for Advisory Opinion from Bell Signs, Inc., 1200 Bell Avenue, Panama City, Florida 32401.

The issues raised by Petitioner, Bell Signs, Inc., are:

1. Whether a credit or refund of New York State and local use tax is available for sales or use tax paid or required to be paid to the state of Florida in the circumstances described below.

2. Whether New York State requires actual payment of the use tax to the state of Florida or whether it will allow a credit or refund based on an audit assessment issued by the state of Florida.

3. By what procedure might Petitioner obtain a credit or refund of New York State and local sales or use tax against the tax paid to Florida?

4. What is the oldest period for which a credit or refund request can be made?

5. Whether Petitioner can file a single application for credit or refund or whether it needs to file a claim for each filing period.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner is a Florida S Corporation that manufactures signs in Florida. Petitioner installs some of these signs out-of-state for non-Florida purchasers. Petitioner has the signs installed at the out-of-state locations by subcontractors. Petitioner contracts with and pays the subcontractors for installing the signs, bills the customers for the signs and installation costs, and collects and pays sales and use taxes on the transactions in accordance with the laws of the states where the signs are delivered and installed. The sales tax is then remitted to the taxing authorities in the states where the signs are installed.

Although Petitioner sells to out-of-state customers, it is treated as a real property contractor under the Florida statutes and is liable for paying use tax to the state of Florida on its fabrication costs on all manufactured signs, regardless of whether the signs are installed in Florida or a site not in Florida. According to Florida Rule 12A-1.051, exterior signs that are welded or bolted, channel letters that are lighted and directly wired, or signs that are embedded in concrete foundations are, based on the method of attachment, classified as real property. Petitioner must pay use tax to Florida on the materials and supplies used to fabricate and install these signs even if the sign is installed in another state.

Applicable law and regulations

Section 1101(b)(4)(i) of the Tax Law provides, in part:

a sale of any tangible personal property to a contractor, subcontractor or repairman for use or consumption in erecting structures or buildings, or building on, or otherwise adding to, altering, improving, maintaining, servicing or repairing real property, property or land, as the terms real property, property or land are defined in the real property tax law, is deemed to be a retail sale regardless of whether the tangible personal property is to be resold as such before it is so used or consumed, . . .

Section 1101(b)(9)(i) of the Tax Law defines the term *capital improvement* to mean:

An addition or alteration to real property which:

(A) Substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; and

(B) Becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and

(C) Is intended to become a permanent installation.

Section 1105(a) of the Tax Law imposes sales tax upon the receipts from every retail sale of tangible personal property, except as otherwise provided.
Section 1105(c)(3) of the Tax Law imposes a tax on the receipts from every sale, except for resale, of the following services:

* * *

Installing tangible personal property, excluding a mobile home, or maintaining, servicing or repairing tangible personal property, including a mobile home, not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith, except:

* * *

(iii) for installing property which, when installed, will constitute an addition or capital improvement to real property, property or land, as the terms real property, property or land are defined in the real property tax law as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter; . . .

Section 1110 of the Tax Law provides, in part:

(a) Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state on and after June first, nineteen hundred seventy-one except as otherwise exempted under this article, (A) of any tangible personal property purchased at retail, (B) of any tangible personal property (other than computer software used by the author or other creator) manufactured, processed or assembled by the user, (i) if items of the same kind of tangible personal property are offered for sale by him in the regular course of business or (ii) if items are used as such or incorporated into a structure, building or real property by a contractor, subcontractor or repairman in erecting structures or buildings, or building on, or otherwise adding to, altering, improving, maintaining, servicing or repairing real property, property or land, as the terms real property, property or land are defined in the real property tax law, if items of the same kind are not offered for sale as such by such contractor, subcontractor or repairman or other user in the regular course of business, . . .

* * *

(c) For purposes of subclause (i) of clause (B) of subdivision (a) of this section, the tax shall be at the rate of four percent of the price at which items of the same kind of tangible personal property are offered for sale by the user, and the mere storage, keeping, retention or withdrawal from storage of tangible personal property by the person who manufactured, processed or assembled such property shall not be deemed a taxable use by him; . . .

(d) For purposes of subclause (ii) of clause (B) of subdivision (a) of this section, the tax shall be at the rate of four percent of the consideration given or contracted to be given for the tangible personal property manufactured, processed or assembled into the tangible personal property the use of which is subject to tax, including any charges for shipping or delivery as described in paragraph three of subdivision (b) of section eleven hundred one.

(e) Notwithstanding the foregoing, provisions of this section, for purposes of clause (B) of subdivision (a) of this section, there shall be no tax on any portion of such price which represents the value added by the user to tangible personal property which he fabricates and installs to the specifications of an addition or capital improvement to real property, property or land, as the terms real property, property or land are defined in the real property tax law, over and above the prevailing normal purchase price prior to such fabrication of such tangible personal property which a manufacturer, producer or assembler would charge an unrelated contractor who similarly fabricated and installed such tangible personal property to the specifications of an addition or capital improvement to such real property, property or land.

Section 1115(a) of the Tax Law provides, in part:

Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(17) Tangible personal property sold by a contractor, subcontractor or repairman to a person other than an organization described in subdivision (a) of section eleven hundred sixteen, for whom he is adding to, or improving real property, property or land by a capital improvement, or for whom he is about to do any of the foregoing, if such tangible personal property is to become an integral component part of such structure, building or real property; provided, however, that if such sale is made pursuant to a contract irrevocably entered into before September first, nineteen hundred sixty-nine, no exemption shall exist under this paragraph.

Section 1118 of the Tax Law provides, in part:

The following uses of property and services shall not be subject to the compensating use tax imposed under this article:

* * *

(7)(a) In respect to the use of property or services to the extent that a retail sales or use tax was legally due and paid thereon, without any right to a refund or credit thereof, to any other state or jurisdiction within any other state but only when it is shown that such other state or jurisdiction allows a corresponding exemption with respect to the sale or use of tangible personal property or services upon which such a sales tax or compensating use tax was paid to this state. To the extent that the tax imposed by this article is at a higher rate than the rate of tax in the first taxing jurisdiction, this exemption shall be inapplicable and the tax imposed by section eleven hundred ten of this chapter shall apply to the extent of the difference in such rates, except as provided in paragraph (b) of this subdivision.

(b) To the extent that the compensating use tax imposed by this article and a compensating use tax imposed pursuant to article twenty-nine are at a higher aggregate rate than the rate of tax imposed in the first taxing jurisdiction, the exemption provided in paragraph (a) of this subdivision shall be inapplicable and the taxes imposed by this article and pursuant to article twenty-nine shall apply to the extent of the difference between such aggregate rate and the rate paid in the first taxing jurisdiction. In such event, the amount payable shall be allocated between the tax imposed by this article and the tax imposed pursuant to article twenty-nine in proportion to the respective rates of such taxes.

Section 1119(c) of the Tax Law provides, in part:

A refund or credit equal to the amount of sales or compensating use tax imposed by this article and pursuant to the authority of article twenty nine, and paid on the sale or use of tangible personal property, shall be allowed . . . if a contractor, subcontractor or repairman purchases tangible personal property and later makes a retail sale of such tangible personal property, the acquisition of which would not have been a sale at retail to him but for the second to last sentence of subparagraph (i) of paragraph (4) of subdivision (b) of section eleven hundred one. An application for the refund or credit provided for herein must be filed with the commissioner of taxation and finance within the time provided by subdivision (a) of section eleven hundred thirty nine. Such application shall be in such form as the commissioner may prescribe. Where an application for credit has been filed, the applicant may immediately take such credit on the return which is due coincident with or immediately subsequent to the time that he files his application for credit. However, the taking of the credit on the return shall be deemed to be part of the application for credit. The procedure for granting or denying such applications for refund or credit and review of such determinations shall be as provided in subdivision (e) of section eleven hundred thirty nine.

Section 1139(a) of the Tax Law provides, in part:

In the manner provided in this section the tax commission shall refund or credit any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application therefor shall be filed with the tax commission (i) in the case of tax paid by the applicant to a person required to collect tax, within three years after the date when the tax was payable by such person to the tax commission as provided in section eleven hundred thirty-seven, or (ii) in the case of a tax, penalty or interest paid by the applicant to the tax commission, within three years after the date when such amount was payable under this article, or (iii) in the case of a tax due from the seller, transferor or assignor and paid by the applicant to the tax commission where the applicant is a purchaser, transferee or assignee liable for such tax pursuant to the provisions of subdivision (c) of section eleven hundred forty-one of this chapter, within two years after the giving of notice by the tax commission to such purchaser, transferee or assignee of the total amount of any tax or taxes which the state claims to be due from the seller, transferor or assignor. Such application shall be in such form as the tax commission shall prescribe. No refund or credit shall be made to any person of tax which he collected from a customer until he shall first establish to the satisfaction of the tax commission, under such regulations as it may prescribe, that he has repaid such tax to the customer. . . .

Section 525.2(a)(3) of the Sales and Use Tax Regulations provides:

Except as specifically provided otherwise, the sales tax is a “destination tax.” The point of delivery or point at which possession is transferred by the vendor to the purchaser, or the purchaser’s designee, controls both the tax incidence and the tax rate.

Section 531.3(b) of the Sales and Use Tax Regulations provides, in part:

Tangible personal property manufactured, processed or assembled by the user.

(1) A compensating use tax is imposed when a manufacturer, processor or assembler uses its product as such in New York State or incorporates the product into real property in New York State. This is so whether or not it offers items of the same kind for sale in the regular course of business and whether the product was manufactured, processed or assembled inside or outside New York State. The basis on which compensating use tax is computed, however, depends on whether the user offers items of the same kind for sale in the regular course of business. A compensating use tax is not imposed, however, to the extent the user was required to pay sales tax without a right to a refund or credit upon the purchase of the ingredients, parts or materials manufactured, processed or assembled into the product the use of which is subject to tax.

Example 1: Company A, located in Suffolk County, manufactures and sells its own brand of garage doors. Approximately 80 percent of the doors are installed by Company A; the balance of the doors are installed by the purchaser.

Company A pays sales tax to its New York State suppliers of wood and glass that become part of the doors. When determining the amount of use tax it owes Company A may take credit for the New York State and local sales taxes paid on these materials.

(i) If the user offers items of the same kind for sale in the regular course of business, the basis on which use tax is computed is the price at which items of the same kind of tangible personal property are offered for sale by the user. The price at which items are offered for sale is evidenced by a price list, catalog price or record of sales. In the absence of a catalog price or price list, the average of the prices charged various customers will be deemed to be the price at which the user would sell such item during the regular course of business.

(a) Items of the same kind mean that items belong to an identifiable class, but need not be identical.

Example 2: Windows are items of the same kind when they are a standard size and materials whether or not they are sold from inventory or produced to order from a catalog description. A manufacturer of windows produces from a catalog description square, round and hexagon shaped windows from various materials. The windows regardless of shape, size or materials are considered to be items of the same kind.

When items which are not standard or cataloged are made to the specifications of a particular job, these will not be considered items of the same kind with catalog or inventory sales.

Items made to the specifications of a particular job will not be considered items of the same kind as items made to the specifications of another particular job.

* * *

(b) Offered for sale in the regular course of business means that a person sells in excess of 10 percent of his product for each 12 month period beginning December 1st, measured by weight, volume, size or other unit on which the price is based, to persons other than organizations exempt under section 1116(a) of the Tax Law. For the purpose of this calculation, the amount of product sold to all persons except exempt organizations will constitute the numerator of the fraction and the total amount of the product sold and used in performing work for others, with the exclusion of products sold to or used in performing work for exempt organizations, will constitute the denominator. When it is determined that a person is selling in excess of 10 percent of his product in the regular course of business as defined herein, he will be considered a person required to pay compensating use tax on the basis set forth in subparagraph (i) of this paragraph. The formula to be used in determining whether the product is being sold in the regular course of business is:

(c)

$$\frac{\text{Tot. amt. sold minus amt. sold to exempt organizations}}{\text{Tot. amt. sold and used minus (amt. sold to plus amt. used for ex. organ.)}}$$

* * *

(d) The mere storage, keeping, retention or withdrawal from storage of tangible personal property by the person who manufactured, processed or assembled it is not a taxable use for purposes of this subparagraph.

(ii) If the user does not offer items of the same kind for sale in the regular course of business as described in subparagraph (i) of this paragraph, the basis on which use tax is computed is the consideration given or contracted to be given for the tangible personal property manufactured, processed or assembled into the tangible personal property the use of which is subject to tax, including any charges by the user's seller to the user for shipping or delivery of that property to the user.

Example 11: An asphalt company, located in Ohio, produces paving compounds for its own use in performing capital improvement contracts and repairs for others. It sells none of its product to others. It purchased aggregate and petroleum base materials in Ohio from other vendors. It will be required to pay a use tax on the cost of those materials to the extent not used on exempt organization jobs. The tax rate applicable is the rate in effect in New York State where the asphalt is installed.

Example 12: Company A produces factory manufactured homes at its plant in Vermont. The components are manufactured in Vermont and the homes are shipped in sections to customer prepared sites where Company A erects the home. Company A only sells its product on an installed basis. It does not sell the individual components.

Company A owes use tax on the individual building components manufactured at its plant in Vermont which were used in erecting homes of customers in New York. The use tax is based on the cost to Company A of the raw materials it used to manufacture the building components. The tax due is computed by multiplying the cost of the raw materials by the tax rate in effect at the site in New York where the home is erected.

(2)(i) Where a manufacturer, processor or assembler fabricates its manufactured, processed or assembled product and installs it to the specifications of a capital improvement to real property, the value added by this fabrication is not included in the basis on which compensating use tax is computed. However, the installation by the manufacturer, processor or assembler of its fabricated product to the specifications of a capital improvement to real property is a use of the product subject to compensating use tax. The basis on which the use tax is computed depends on whether the manufacturer, processor or assembler offers its fabricated product for sale in the regular course of business.

* * *

(3) The compensating use tax computed to be due shall be paid on each quarterly or part quarterly return based on the experience in the period for which the return is due. A schedule shall be attached to the return for the quarter ending November 30th of each year for the year beginning the prior December 1st, for the purpose of determining whether, on an annual basis, the user offered his product for sale in the regular course of business, as defined in clause (b) of subparagraph (i) of paragraph (1) of this subdivision. An adjustment shall be made on such return for the tax due for the year ending November 30th, together with the appropriate payment or request for refund or credit.

Section 541.2(d) of the Sales and Use Tax Regulations provides:

A *construction contractor* means any person who engages in erecting, constructing, adding to, altering, improving, repairing, servicing, maintaining, demolishing or excavating any building or other structure, property, development, or other improvement on or to real property, property or land.

Section 541.5 of the Sales and Use Tax Regulations provides, in part:

Contracts with customers other than exempt organizations.

* * *

(b) Capital improvements contracts. (1) Purchases. All purchases of tangible personal property (excluding qualifying production machinery and equipment exempt under section 1115(a)(12) of the Tax Law) which are incorporated into and become part of the realty or are used or consumed in performing the contract are subject to tax at the time of purchase by the contractor or any other purchaser. A certificate of capital improvement may not be validly given by any person or accepted by a supplier to exempt the purchase of these materials.

(2) Labor and material charges. All charges by a contractor to the customer for adding to or improving real property by a capital improvement are not subject to tax provided the customer supplies the contractor with a properly completed certificate of capital improvement.

* * *

(4) Documents; capital improvement contracts.

(i) When a properly completed certificate of capital improvement has been furnished to the contractor, the burden of proving the job or transaction is not taxable and the liability for the tax rests solely upon the customer.

(*a*) The prime contractor should obtain a certificate of capital improvement from the customer and retain it as part of his records. Copies of such certificate must be furnished to all subcontractors on the job and retained as part of their records.

(*b*) A certificate of capital improvement may not be issued by a contractor, subcontractor or any other person to a supplier on the purchase of tangible personal property.

* * *

(iii) If a contract includes the sale of tangible personal property which remains tangible personal property after installation, the contractor must collect the appropriate

New York State and local taxes from the customer on the selling price, including any charge for installation, of the tangible personal property unless a properly completed exemption certificate is issued by the customer. The contractor may apply for a credit or refund of taxes he has paid on purchases of the tangible personal property that remain tangible personal property after installation.

Example 1: A contractor sells a building he has constructed and, as a part of the sale agreement, installs free standing water fountains which remain tangible personal property when installed. The contractor's billing to his customer must separately state all charges for tangible personal property included in the sales agreement. The New York State and applicable local tax rate must be collected on the total charges for the water fountains including any installation charges. In this instance, the contractor may purchase the water fountains tax-free using a contractor exempt purchase certificate. If he pays the tax to his supplier, he is entitled to a refund or credit of the tax paid on the purchase of the water fountains.

Opinion

Petitioner manufactures its signs outside New York State and erects or installs some of them in New York State. Petitioner's installations are either capital improvements to real property or installations of tangible personal property that remain tangible personal property after installation.

If Petitioner installs a sign that qualifies as a capital improvement to real property, Petitioner is not required to collect sales tax from its customer. Petitioner should obtain a properly completed *Certificate of Capital Improvement* (Form ST-124) from its customer. Petitioner is, however, considered to be a construction contractor for New York State and local sales tax purposes. See section 541.2(d) of the Sales and Use Tax Regulations. Purchases by Petitioner of components and materials used to construct its signs that qualify as capital improvements upon installation are subject to New York sales tax as a retail purchase of tangible personal property when such property is delivered to Petitioner in New York State. See section 1101(b)(4)(i) of the Tax Law and section 541.5(b) of the Sales and Use Tax Regulations. Petitioner as a construction contractor may not issue a resale certificate to purchase such items without the payment of sales tax.

If signs manufactured by Petitioner in Florida are installed by Petitioner in New York State as capital improvements, Petitioner's use of such signs in New York is subject to New York State and local use tax under section 1110(a)(B) of the Tax Law. Further, as a manufacturer, if Petitioner sells in excess of 10% of its signs at retail (i.e., without installation) and the signs are of the same kind as the sign being installed in New York, Petitioner is required to compute the use tax based on its selling price for the sign. Otherwise, use tax on the signs installed in New York is based on the consideration paid for the tangible personal property that is manufactured, processed, or assembled into the sign. See section 1110(c) and (d) of the Tax Law and section 531.3(b) of the Sales and Use Tax Regulations. If Petitioner fabricates the signs

to the specifications of a capital improvement project, the value added by this fabrication is not included in the basis on which use tax is computed. See section 1110(e) of the Tax Law and section 531.3(b)(2) of the Sales and Use Tax Regulations.

If Petitioner installs a sign that does not meet the conditions to qualify as a capital improvement to real property and, therefore, the sign remains tangible personal property after its installation, Petitioner must collect New York State and local sales tax on its entire charge for the sign, including installation, from its customer. See section 1105(a) of the Tax Law, which imposes sales tax on sales of tangible personal property, and section 1105(c)(3) of the Tax Law, which imposes sales tax on installing, maintaining, servicing, or repairing tangible personal property. Petitioner is entitled to a credit or refund of any New York State and local sales and use tax Petitioner paid on its purchase of tangible personal property used in such installation and actually transferred to the customer as a component part of the installed sign. Alternatively, in lieu of paying the sales tax, Petitioner may issue a *Contractor Exempt Purchase Certificate* (Form ST-120.1) to its vendor for purchases of materials that it will incorporate into the installed sign that will remain tangible personal property after installation. See section 1119(c) of the Tax Law and section 541.5(b)(4)(iii), Example 1 of the Sales and Use Tax Regulations.

Petitioner also makes sales of signs without installation. Such sales are retail sales of tangible personal property subject to New York State and local sales tax under section 1105(a) of the Tax Law to be collected from Petitioner's customer at the rate in effect where the sign is delivered to Petitioner's customer or its designee. See section 525.2(a)(3) of the Sales and Use Tax Regulations.

Issue 1 - Petitioner asks whether a credit is allowed against its liability for New York State and local use tax for the tax it paid or was required to pay to the state of Florida on materials manufactured in Florida and used in its installation of signage in New York State.

When Petitioner makes an installation of signage that qualifies as a capital improvement to real property under section 1101(b)(9)(i) of the Tax Law, Petitioner is liable for the New York State and local use tax on its use of signage or other materials that were manufactured or purchased in Florida and incorporated into such installation in New York. Such tax is computed based on the rate in effect where the capital improvement installation occurs. Section 1118(7) of the Tax Law provides for an exemption from New York State and local use tax imposed on the use of tangible personal property or services to the extent that a retail sales or use tax was legally due and paid on such property or services, without any right to a refund or credit, to any other state or jurisdiction within any other state but only when such other state or jurisdiction allows a corresponding exemption with respect to sales or use tax paid to New York State. If Petitioner has already paid a sales or use tax to the state of Florida on signage and other materials installed as a capital improvement in New York without any right to a refund or credit, under section 1118(7) of the Tax Law, Petitioner may take a credit against the use tax Petitioner is required to pay to New York for the tax paid to Florida on those materials. See *A Guide to New York State Reciprocal Credits for Sales Taxes Paid to Other States*, Publication 39 (8/04), for information about computing the applicable amount of the credit and a listing of the reciprocal credits

allowed for taxes paid to other states. If the total tax paid in Florida exceeds the total use tax due in New York, the excess amount will not be refunded.

However, when Petitioner makes an installation that does not qualify as a capital improvement to real property under section 1101(b)(9)(i) of the Tax Law, Petitioner is not liable for any New York State or local sales or use tax on its purchase or use of the signage and materials incorporated into such installation. Therefore, in such case, Petitioner has no New York use tax liability against which Petitioner might credit any sales or use tax Petitioner paid to Florida or any other taxing jurisdiction. Petitioner's customer is liable for sales tax on the full price of such property, including installation, and Petitioner is required to collect the New York State and local tax from its customer.

Issue 2 - Petitioner asks whether New York State requires actual payment of tax to the state of Florida or whether it will allow a credit or refund based on an audit assessment issued by the state of Florida.

Section 1118(7)(a) of the Tax Law requires that in order to receive a credit from New York State for taxes paid to another state, certain conditions must be met. Among these is the condition that a retail sales or use tax was legally due and paid on the purchase, without any right to a refund or credit of tax from the other state. Accordingly, a credit may only be granted where Petitioner can show that the tax was legally due and paid to Florida. A credit may not be taken for taxes that have been assessed against Petitioner by Florida but have not been paid by Petitioner. As previously noted, Petitioner is only eligible for a credit for taxes Petitioner has paid to Florida against use tax Petitioner may owe on materials Petitioner incorporates into installations of signs in New York that constitute capital improvements in New York.

Issue 3 - Petitioner asks by what procedure it might obtain a credit or refund of New York State and local sales or use tax against the tax paid to Florida.

Petitioner may use an *Application for Credit or Refund of Sales or Use Tax*, Form AU-11, to apply for a credit or refund of use tax previously paid to New York State on the use of materials incorporated into a capital improvement project in New York if Florida sales or use tax was legally due and paid to Florida without any right to a refund or credit of such tax from Florida. Petitioner must substantiate that it paid the tax to Florida without any right to a refund or credit and that it also paid the use tax to New York.

Alternatively, if the New York State and local use tax has not previously been paid by Petitioner to New York and provided that Petitioner can substantiate that it paid the tax to Florida, without any right to a refund or credit, Petitioner may take the credit for the Florida tax when reporting its New York State and local use tax liability on its New York State and local sales and use tax return.

Issues 4 and 5 – Petitioner asks what is the oldest period for which a credit or refund can be requested; and whether it can file a single application to cover all filing periods.

Petitioner may apply for a credit or refund of New York use tax using Form AU-11 within three years of the date that the tax was payable to New York. See section 1139(a) of the Tax Law. Petitioner need not file a separate claim for each filing period.

DATED: April 30, 2008

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Taxpayer Guidance Division

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.