

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-09(29)S
Sales Tax
July 15, 2009

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S090422A

On April 22, 2009, the Department of Taxation and Finance received a petition for an advisory opinion from the Petitioner, [REDACTED].

The issue raised by Petitioner is how much sales tax may be subject to a refund or credit when a customer returns merchandise, but receives less than the original purchase price as a refund. In such a situation, is the customer entitled to a full refund of all sales tax paid, based upon the original purchase price of the merchandise, or entitled only to a partial refund of sales tax (determined by the percentage of the original price that is actually refunded to the customer)?

We conclude that the customer is entitled to only a partial refund of the sales tax, based upon a percentage of the purchase price refunded. The New York State sales tax is a transaction tax. Since the sales tax initially collected is based upon the purchase price in the original transaction that gave the customer the use and/or possession of the merchandise, the customer is entitled to a refund of sales tax only to the extent the original transaction is undone. If Petitioner retains a percentage of the original sales price, the sales tax collected on that retained amount (receipt) must be remitted to the State, and is not subject to a refund.

Facts

Petitioner is a specialty retailer of luxury, designer, and fashion merchandise, with stores located in New York State. When Petitioner makes a retail sale of merchandise, it collects sales tax based upon the purchase price charged to the customer and remits the taxes collected to New York State. Petitioner has instituted a new return policy whereby customers making returns to Petitioner more than 60 days after their receipt of merchandise will be entitled to only a partial refund of the original purchase price. Petitioner's refund policy is as follows:

Return Within	Amount of Credit
0-60 days from receipt of merchandise	100% of original purchase price
61-120 days from receipt of merchandise	75% of original purchase price
121-180 days from receipt of merchandise	50% of original purchase price
181+ days from receipt of merchandise	0%

Petitioner explains that the percentage reduction reflects the fact that the value of the merchandise decreases with the passage of time. This is because product models go out of date, fashions and styles change with seasons, and returned merchandise generally is less valuable than merchandise that has not been previously sold.

In addition, the extended period of use and/or possession by the customer after the initial sale date diminishes the value of the merchandise to Petitioner because, among other things, it prevents Petitioner from having the merchandise in its inventory and available for sale to others (at full market value). Thus, in the above refund situations, Petitioner holds back a percentage of the original purchase price based on that use/possession by the customer and to compensate Petitioner for the diminishing value of the returned merchandise over time.

Analysis

Tax Law §1105(a) imposes sales tax upon “[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article” (emphasis added). The New York State sales tax is a transaction tax. Indeed, section 525.2(a)(2) of the New York State Sales and Use Tax Regulations provides: “a taxed transaction is an act resulting in the receipt of consideration for the transfer of title to or possession of tangible personal property” The regulations promulgated pursuant to Tax Law §1132(e) provide for refunds and credits of the tax paid on cancelled sales and returned merchandise. 20 NYCRR §534.6. They do not, however, address the particular situation about which Petitioner inquires.

Petitioner properly collects sales tax based upon the original purchase price charged to the customer. Petitioner’s new return policy allows customers making returns to Petitioner more than 60 days after their receipt of merchandise to obtain only a partial refund of the purchase price paid to Petitioner. As previously noted, Petitioner’s percentage reduction in the amount of refund it will provide its customer is a reflection of the fact that the value of the merchandise decreases proportionately to the increased passage of time after the initial sales transaction. As Petitioner notes, product models go out of date, fashions and styles change with the seasons, and returned merchandise generally is less valuable than merchandise that has not been previously sold.

Since the value of the merchandise has diminished, this prorated refund reflects a charge by Petitioner to the customer to compensate for the loss in value/marketability of the item that Petitioner incurs as a result of having to resell the item (likely at reduced cost) two months or more after the original sale. Moreover, sales tax is a transaction tax. Since the sales tax initially collected is based upon the amount of the original transaction that gave the customer the use and /or possession of the merchandise, the customer is entitled to a refund of sales tax only to the extent the original transaction is undone. If Petitioner retains a percentage of the original sales price, the sales tax collected on that retained amount must be remitted to the State, and is not subject to a refund or credit.

While Petitioner suggests that the retained amount be treated like a restocking charge, which was determined not to be a receipt subject to sales tax (*B&L Wholesale Supply, Inc.*, TSB-A-05(46)S), this approach is not borne out by the facts presented. Here, the prorated charge bears no relationship to a cost for “restocking” the merchandise, where Petitioner would be charging customers to recover the cost of restoring the product to a saleable condition and returning the merchandise to its proper location in Petitioner’s inventory. Were that the case, Petitioner would charge a flat restocking fee whenever merchandise was returned, regardless of the date of the return. Here, however, Petitioner’s escalating percentage reduction for refunds is expressly tied to the date

