

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). Petitioner asks whether it is required to pay New York State and local sales tax on its purchase of motor parts. We conclude that to the extent that Petitioner purchases these motor parts for resale, its purchases are not subject to Sales Tax.

Facts

Petitioner is a business in the United Kingdom (UK) that purchases motor parts from various suppliers in the United States (US). Every two weeks the orders that Petitioner places in the US are sent by its suppliers to an entity in New York State that consolidates and ships them to Petitioner. Petitioner indicates that it resells these motor parts in the UK.

Analysis

Sales tax applies to the receipts from every retail sale of tangible personal property (TPP) See Tax Law § 1105(a). A “retail sale” includes any sale of TPP to any person for any purpose, other than for resale as such. See Tax Law § 1101(b)(4)(i). A “sale” is any transfer of title or possession or both in exchange for a consideration. See Tax Law § 1101(b)(5). TPP is “[c]orporeal personal property of any nature.” Tax Law § 1101(b)(6).

Sales tax is a destination tax. See 20 NYCRR 525.2(3). 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. See *id.*

Petitioner purchases motor parts from various suppliers in the US. These parts are dispatched to an entity in New York that consolidates and ships them to Petitioner in the UK. No more information about this entity is provided by Petitioner. However, this entity appears to be a designee of Petitioner, thus making New York State the point where Petitioner’s purchases are delivered. We find that the sale of these parts, therefore, occurs in New York State, and would be subject to sales tax unless an exemption applies.

Petitioner indicates that it resells the motor parts in the UK. Because Petitioner is purchasing these motor parts for resale, those purchases would not be retail sales for sales tax purposes and would not be subject to sales tax. When making such purchases, however, Petitioner must furnish its suppliers with a properly completed Resale Certificate (Form ST-120). See TSB-M-93(3)S.

