

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-81(35)S
Sales Tax
October 20, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810710A

On July 10, 1981 a Petition for Advisory Opinion was received from Ketchum Manufacturing Co., Inc., 1928 East River Drive, P.O. Box 10, Lake Luzerne, New York 12846.

The issue raised is whether Petitioner is obligated to collect sales tax upon delivery of tangible personal property within New York State in the type of transaction described below.

Petitioner receives a purchase order from an out-of-state company. Petitioner fills the order and, in turn, ships the merchandise to the company's customer in New York State. The shipment is made in the name of the out-of-state company. Petitioner then bills the out-of-state company and receives payment from it.

Section 1105(a) of the Tax Law imposes a tax on the following:

"The receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

The Sales and Use Tax Regulations provide, in relevant part, as follows:

"(1) A sale is taxable at the place where the tangible personal property or service is delivered or the point at which possession is transferred by the vendor to the purchaser or his designee." 20 NYCRR 526.7(e).

Section 1132(c) of the Tax Law provides, in relevant part, that it shall be presumed that all receipts for property . . . of any type mentioned in [section 1105(a) of the Tax Law] . . . are subject to tax until the contrary is established . . . Unless . . . a vendor shall have taken from the purchaser a certificate in such form as the tax commission may prescribe . . . to the effect that the property . . . was purchased for resale or for some use by reason of which the sale is exempt from tax . . . [or to the effect that] the purchaser is an exempt organization . . . the sale shall be deemed a taxable sale at retail.

Accordingly, inasmuch as Petitioner has made a sale of tangible personal property delivered within New York State and inasmuch as the purchaser has not tendered to the seller a certificate described in Section 1132(c) of the Tax Law, State sales tax imposed under Article 28 of the Tax Law and local sales tax imposed under the authority of Article 29 of the Tax Law are due on the receipts arising from the sale. Tax Law 99 1105(a) and 1210.

DATED: October 5, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau