

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

TSB-A-87(9)S
Sales Tax
January 29, 1987

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S860926A

On September 26, 1986, a Petition for Advisory Opinion was received from Norstar Leasing Services Inc., One Norstar Plaza (P.O. Box 1667), Albany, New York 12201.

The issue raised is whether an exemption certificate furnished to Petitioner as lessor by a lessee would be valid documentation for exempting both the Petitioner's and its assignee's transactions with the lessee from sales tax.

Petitioner is engaged in leasing tangible personal property. After lease agreements are executed between Petitioner and its lessee, the lease may be assigned to an affiliate of the Petitioner ("Assignee") for performing the services of financing, billing, collecting rental payments and remitting sales tax. Petitioner may retain ownership of the leased property or transfer title to the Assignee, a separate entity, for a consideration.

Section 1101(b)(5) of the Tax Law defines sale as "[a]ny 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, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor."

Section 1105 of the Tax Law imposes a tax on "(a) [t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article" and "(c) [t]he receipts from every sale, except for resale, of [certain enumerated] services."

The Sales and Use Tax Regulations of the State Tax Commission provide as follows:

When the vendor makes a sale which is exempt because the property purchased is for resale, or for an exempt use, or the purchaser is an exempt organization, as proof of the exemption the vendor shall, at the time of the sale, obtain a properly completed exemption certificate from the purchaser. . . .

A certificate is considered to be properly completed when it contains [among other information] the . . . name and address of purchaser [and] the name and address of vendor. 20 NYCRR 532.4 (b)(2), (c) (2).

Exemption certificates must be dated and retained in order to prove exempt sales. . . . Every vendor accepting an exemption certificate must maintain a method of associating a sale. . . with the certificate on file. 20 NYCRR 533.2 (b)(4).

Accordingly, it is essential for Petitioner to retain exemption certificates relating to transactions with its lessees. Moreover, such certificates would not be valid for supporting exempt transactions between the Assignee and the lessees because, by not naming the Assignee as vendor, they would not be "properly completed" for such purposes.

Furthermore, when transferring title to tangible personal property to the Assignee for a consideration, Petitioner is making a "sale" (Tax Law 1105 (b)(5), supra) and must either collect sales tax or obtain an exemption certificate (e.g., a resale certificate, Form ST-120, for property intended for rental) from the Assignee. If thereafter the Assignee is entitled to the rental amounts payable by the lessee who claims exemption from sales tax, it must obtain a properly completed exemption document for its own records.

Additionally, Petitioner states that the Assignee may merely take on certain administrative services, including the collection of rental receipts, with regard to tangible property owned and leased by the Petitioner.

Pursuant to the Sales and Use Tax Regulations, it is statutorily presumed that all receipts from sales [or rentals] of property mentioned in Tax Law 1105 (a) (b) (c) and (d) are subject to tax until the contrary is established. The burden of proving that any receipt is not taxable is on the vendor or the customer. 20 NYCRR 533.2 (a)(1).

Tax Law section 1101(b)(8)(ii) authorizes the Tax Commission to treat any agent or representative of a vendor as a vendor jointly responsible with its principal for the collection and payment of the sales tax when in the opinion of the Tax Commission it is necessary for the efficient administration of the sales tax.

Although, in the instant case, the Assignee is not the vendor of the property, the Assignee is nevertheless jointly responsible with Petitioner for the collection and payment of the sales tax since the Assignee will be the actual collector of rental receipts.

Accordingly, since sales tax is imposed on receipts from rentals of tangible personal property, the Assignee, as the collector of such receipts, must charge the appropriate sales tax or have in its possession, no later than 90 days after delivery of the property or the rendition of a service, an exemption certificate in such form and containing such information as the Tax Commission may prescribe. See generally Tax Law 1132; 20 NYCRR 532.4, 532.7.

DATED: January 29, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.