

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

TSB-A-93 (55)S  
Sales Tax  
October 18, 1993

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S930721A

On July 21, 1993 a Petition for Advisory Opinion was received from Transkrit Corporation, PO Box 500, Transkrit Lane, Brewster, NY 10509.

The issue raised by Petitioner, Transkrit Corporation, is whether a vendor located within New York State, who makes sales of business forms exclusively to municipalities in New York State is required to issue a properly completed form ST-120, Resale Certificate to Petitioner who is the in-state supplier of such forms to the vendor.

Petitioner, a manufacturer of business forms, sells and ships forms to a customer located within New York State. The customer contends that since it resells the forms only to municipalities, it is not required to issue a form ST-120, Resale Certificate to Petitioner.

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

Section 1132(c) of the Tax Law provides, in part:

For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all receipts for property or services of any type mentioned in subdivisions (a), (b), (c) and (d) of section eleven hundred five ... are subject to tax until the contrary is established, and the burden of proving that any receipt ... is not taxable hereunder shall be upon the person required to collect tax or the customer . ... unless (1) a vendor, not later than ninety days after delivery of the property ... 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, ... the sale shall be deemed a taxable sale at retail ....

Section 1134 of the Tax Law states, in part:

Registration. (a)(1)(i) Every person required to collect any tax imposed by this article ..., (ii) every person purchasing or selling tangible personal property for resale ..., shall file with the commissioner of taxation and finance a certificate of registration, in a form prescribed by him, at least twenty days prior to commencing business ... or such purchasing, selling ... whichever comes first.

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In the instant matter when Petitioner makes sales of business forms to the customer, Petitioner is considered to be selling tangible personal property to the customer, the sale of which is subject to the sales tax imposed under Section 1105(a) of the Tax Law.

Accordingly, Petitioner should collect the appropriate State and local sales tax on the receipts from such sales to the customer unless the customer furnishes Petitioner a properly completed form ST-120, Resale Certificate as required under Section 1132(c) of the Tax Law. It is noted that the customer must be registered as a vendor for sales tax purposes as required under Section 1134 of the Tax Law in order to issue a valid form ST-120, Resale Certificate.

The fact that the customer is selling the business forms purchased from Petitioner to New York State municipalities, which are exempt from paying State or local sales tax, does not preclude the customer from the requirement of being registered as a sales tax vendor and issuing the proper exemption certificate to Petitioner.

DATED: October 18, 1993

/s/  
PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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