

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

TSB-A-96 (88) S
Sales Tax
December 27, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S961016A

On October 16, 1996, a Petition for Advisory Opinion was received from Cynthia Shane, 8 Town Garden Drive #11, Liverpool, New York 13088.

The issue raised by Petitioner, Cynthia Shane, is whether the sale of services and video tapes to towns, cities, other government entities, and exempt organizations is subject to sales tax.

Petitioner submits the following facts.

Petitioner video tapes town board meetings, church services and on occasion wedding services and receptions. In each event, the master tape is kept by Petitioner and a copy of the tape is given to the purchaser (e.g., town board, church or the newlyweds) for a fee.

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

Section 1116 of the Tax Law provides in part:

Exempt organizations. (a) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

(1) The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services or property of a kind not ordinarily sold by private persons;

* * *

(4) Any corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation,

(except as otherwise provided in subsection (h) of section five hundred one of the United States internal revenue code of nineteen hundred fifty-four, as amended), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office; (Emphasis added)

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

(1) 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, all rents for occupancy of the type mentioned in subdivision (e) of said section, and all amusement charges of any type mentioned in subdivision (f) of said section, are subject to tax until the contrary is established, and the burden of proving that any receipt, amusement charge or rent is not taxable hereunder shall be upon the person required to collect tax or the customer. Except as provided in subdivision (h) or (k) of this section, unless (i) a vendor, not later than ninety days after delivery of the property or the rendition of the service, shall have taken from the purchaser a resale or exemption certificate in such form as the commissioner may prescribe, signed by the purchaser and setting forth the purchaser's name and address and, except as otherwise provided by regulation of the commissioner, the number of the purchaser's certificate of authority, together with such other information as the commissioner may require, to the effect that the property or service was purchased for resale or for some use by reason of which the sale is exempt from tax under the provisions of section eleven hundred fifteen, and, where such resale or exemption certificate requires the inclusion of the purchaser's certificate of authority number or other identification number required by regulations of the commissioner, that the purchaser's certificate of authority has not been suspended or revoked and has not expired as provided in section eleven hundred thirty-four, or (ii) the purchaser, not later than ninety days after delivery of the property or the rendition of the service, furnishes to the vendor: any affidavit, statement or additional purchaser is an exempt organization described in section eleven hundred sixteen, the sale shall be deemed a taxable sale at retail. Where a resale or exemption certificate or an affidavit, statement or additional evidence referred to in the previous sentence is received within the time limit set forth therein, but is deficient in some material manner, and where such deficiency is thereafter removed, the receipt of such resale or exemption certificate or such affidavit, statement or additional evidence shall be deemed to have satisfied all of the requirements of the preceding sentence. Where such a resale or exemption certificate or such an affidavit, statement or additional evidence has been furnished to the vendor, the burden of proving that the receipt, amusement charge or rent is not taxable hereunder shall be solely upon the customer. The vendor shall not

be required to collect tax from purchasers who furnish a resale or exemption certificate, or such an affidavit, statement or additional evidence in proper form, unless, in the case of a resale or exemption certificate described in clause (i) of the second sentence of this paragraph whereon the purchaser's certificate of authority number, or other identification number required by regulation of the commissioner, is required to be included, such purchaser's certificate of authority is invalid because it has been suspended or revoked as provided in section eleven hundred thirty-four, and the commissioner has furnished registered vendors with information identifying those persons whose certificates of authority have been suspended or revoked, or unless such purchaser's certificate of authority is invalid because it has expired, and the commissioner has provided registered vendors with a means of determining whether such expiration has occurred. Where the vendor accepts such a resale or exemption certificate from a person identified by the commissioner as one whose certificate of authority has been suspended or revoked or from a person whose certificate of authority has been identified as having expired, the receipt, amusement charge or rent from such transaction shall be deemed to be a taxable sale at retail. (Emphasis added)

Section 529.1 of the Sales and Use Tax Regulations provides, in part:

(a) Except as otherwise provided in this Title. any sale by or to any person or organization described in this Part or any amusement charge to such a person or organization where it is the purchaser, or any use or occupancy by any such person or organization is not subject to the sales or use tax imposed by article 28 or authorized by article 29 of the Tax Law. Any sale, amusement charge, use or occupancy by or to any person or organization who or which does not qualify for exemption pursuant to the provisions of this Part may qualify for exemption as described in other provisions of this Title.

(b) Any person or organization other than:

(1) New York State;

(2) any of New York State's agencies, instrumentalities, public corporations (including a public corporation or compact with another state or Canada);

(3) political subdivisions of New York State;(Emphasis added)

Section 529.2 of the Sales and Use Tax Regulations provides, in part:

New York State, agencies, instrumentalities, public corporations, and political subdivisions thereof. (Tax Law, Sec. 1116(a)(1)) (a) Governmental entities.

(1) Agencies and instrumentalities of the State as used in this section means

any authority, commission or independent board created by an act of the Legislature for a public purpose.

(2) A public corporation as used in this section means any corporation created by an act of the Legislature for a public purpose or pursuant to an agreement or compact with another state or Canada.

Example: Urban Development Corporations and Industrial Development Agencies are public corporations and may purchase tangible personal property exempt from the sales and use taxes. Cross-reference: For contracts with exempt organizations, see Part 541 of this Title.

(3) A political subdivision as used in this section means a county, town, city, village, school district, fire district, special district corporation and board of cooperative educational services of this State.

(b) As purchaser. (1) New York State, or any of its agencies, instrumentalities, public corporations or political subdivisions (hereinafter referred to as New York State governmental entities) are not subject to sales or use tax when they are the purchaser, user, or consumer of tangible personal property or services or when they are the occupant of a hotel room or a patron at a place of amusement, club, roof garden, cabaret or other similar places. (Emphasis added)

(2) New York State governmental entities as purchasers, users, consumers, occupants or patrons must exercise their right to exemption through the issuance of governmental purchase orders or the appropriate exemption document. (Emphasis added)

Section 529.7 of the Sales and Use Tax Regulations provides, in part:

Religious, charitable, scientific, testing for public safety, literary or educational organizations, organizations which foster national or international amateur sports competition, and organizations for the prevention of cruelty to children or animals. (Tax Law, Sec. 1116 (a)(4)) (a)General.(1) Any corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation (except as otherwise provided in subsection (h) of section 501 of the United States Internal Revenue Code of 1986), and

which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, which meet the qualifications of this section are exempt from the sales and use tax on any purchases of tangible personal property, services, food and drink, hotel occupancy, or admissions and dues. In addition, such organizations may, except under the circumstances described in subdivision (i) of this section, make sales without collecting the sales or use tax. (emphasis added)

* * *

(h) Sales to exempt organizations. (1) Any sale or amusement charge to or any use or occupancy by an exempt organization to which an exempt organization certificate has been issued is exempt from sales and use tax. (Emphasis added)

(2) In order to exercise its right to exemption the organization must be the direct purchaser, occupant or patron of record. It must also be the direct payer of record and must furnish its vendors With a properly completed exempt organization certification. Direct purchaser, occupant or patron as used in this paragraph includes any agent or employee authorized by the organization to act on its behalf in making such purchases, provided the organization and its agent or employee are both identified on any bill or invoice. An organization is the direct payer of record where direct payment is made by the organization or from its funds directly to the vendor. (Emphasis added)

* * *

(4) Sales to any member, officer or employee of an exempt organization are subject to the sales and use tax when the sales are for the personal use of the purchaser rather than the organization.

Section 532.4 of the Sales and Use Tax Regulations provides:

(a) General. (1) It is presumed that all receipts for property or service of any type mentioned in subdivisions (a), (b), (c) and (d) of section 1105 of the Tax Law, all rents for occupancy of the type mentioned in subdivision (e) of said section, and all amusement charges of any type mentioned in subdivision (f) of said section, are subject to tax until the contrary is established.

(b) Burden of proof. (1) The burden of proving that any receipt, amusement charge, or rent is not taxable shall be upon the person required to collect the tax and the customer.

(2) A vendor who in good faith accepts from a purchaser a properly completed exemption certificate or, as authorized by the Department, other documentation evidencing exemption from tax not later than 90 days after delivery

of the property or the rendition of the service is relieved of liability for failure to collect the sales tax with respect to that transaction. The timely receipt of the certificate or documentation itself will satisfy the vendor's burden of proving the nontaxability of the transaction and relieve the vendor of responsibility for collecting tax from the customer. (Emphasis added)

In this case, Petitioner video tapes town board meetings, church services and on occasion wedding services and receptions. In each event, the master tape is kept by Petitioner and a copy of the tape is given to the purchaser for a fee. Section 1132(c) of the Tax Law and Section 532.4(a) of the Sales and Use Tax Regulations provide that all sales are presumed taxable until the contrary is proven.

First, the video taping of the town board meeting and the subsequent sale of a copy of the video tape to a New York State or local governmental entity is an exempt transaction, provided Petitioner receives a purchase order or other appropriate documentation within ninety days of the date of sale, from the governmental entity. (See Section 1116(a)(1) of the Tax Law and Section 529.2(b) of the Sales and Use Tax Regulations.)

Second, the video taping of a religious service for a church which qualifies as an exempt organization under Section 1116(a)(4) of the Tax Law, and the subsequent sale of a copy of the tape to the church is an exempt transaction, provided Petitioner receives an exempt organization certification from the church within ninety days of the date of the sale of the tape. If additional copies of the tape are sold by Petitioner to members of the church for their personal use, rather than to the church, such sales of the video tapes are subject to the sales tax under Section 1105(a) of Tax Law when delivery occurs in New York. (See Section 1116(a)(4) of the Tax Law and Section 529.7(b) and (h) of the Sales and *Use* Tax Regulations)

Finally, when Petitioner videotapes a wedding ceremony and then sells copies of the tape to the married couple, Petitioner is making a sale of tangible personal property that is subject to the sales tax when delivery occurs in New York. (See Matter of Video Memories Associates, Ltd., and Michael Marano. As Officer, Dec Tax App Trib, March 14, 1996, TSB-D-96(16)S.)

DATED: December 27, 1996

/s/
JOHN W. BARTLETT
Deputy Director
Technical Services Bureau

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