

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

TSB-A-99(42)S
Sales Tax
November 3, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S990219A

On February 19, 1999, the Department of Taxation and Finance received a Petition for Advisory Opinion from Jeffrey J. Coren CPA., 225 West 34th Street, Suite 2015, New York, New York 10122.

The issue raised by Petitioner, Jeffrey J. Coren CPA, is whether there is any statutory or regulatory provision which would require a supplier to selectively tax certain items sold to a customer when the supplier has received a properly completed resale certificate.

Petitioner submits the following facts as the basis for this Advisory Opinion.

When purchasing various supplies from a single vendor, a customer supplies a resale certificate. In certain situations, a purchaser may be entitled to the resale exemption on only some of the products sold by that entity.

Example 1:

A vendor of paper products receives a blanket resale certificate from a deli-grocery. Does a resale certificate protect the seller from liability for sales tax due on all sales made to the customer providing the resale certificate?

Example 2:

Janitorial supplies are sold to a janitorial services provider by a supplier. Would a resale certificate provided to a supplier of both chemical and paper products relieve the supplier of any tax liability on the supplies even if some of the supplies might ultimately be taxable to the service provider?

Example 3:

A restaurant or fast food emporium supplies a resale certificate to a vendor of both food and non-food products. Does receipt of a resale certificate relieve this supplier of liability for sales tax on this customer's purchases?

Applicable Law & Regulations

Section 1132(c)(1) 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 . . . [U]nless . . . a vendor, not later than ninety days after delivery of the property or rendition of the service, shall have taken from the purchaser a resale or exemption certificate in such form as the commissioner may prescribe . . . the sale shall be deemed a taxable sale at retail.

Section 532.4(b) of the Sales and Use Tax Regulations provides, in part:

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.

(i) A certificate or other document is "accepted in good faith" when a vendor has no knowledge that the exemption certificate or other document issued by the purchaser is false or is fraudulently presented. If reasonable ordinary due care is exercised, knowledge will not be imputed to the seller required to collect the tax.

* * *

(4) Audit compliance verification procedures. Verification of the exemption certificates and documents received by a vendor will occur during an audit of its records. The verification shall include a review for proper completion and the

timeliness of and receipt in good faith of such exemption certificates and other documents.

* * *

(iv) Exemption certificates or documents not received by the vendor within 90 days after the delivery of the property or the rendition of the service will likewise not, in and of themselves, be considered as satisfying the vendor's burden of proof concerning the taxability of the subject transaction.

* * *

(5) A vendor is not relieved of the burden of proof when it failed to obtain an exemption certificate or accepted an improper certificate, or had knowledge that the exemption certificate issued by the purchaser was false or fraudulently presented.

Opinion

Where a vendor has, in good faith, accepted a resale or exemption certificate within 90 days of delivery of the property, it is not under a duty to investigate or police its customers and has no duty to debate with its customers as to whether or not certain items are subject to sales tax. See Allied Steam Corp., Adv Op Comm T&F October 23, 1990, TSB-A-90(51)S, citing Matter of Saf-Tee Plumbing Corp. v. State Tax Commn., 77 AD2d 1. On the other hand, Petitioner's customers will owe sales or use tax on anything purchased with a resale or exemption certificate that was not resold or put to an exempt use. It should be noted that a vendor may not rely on a resale or other exemption certificate that is not provided within 90 days of the date of delivery. See Section 532.4(b)(4)(iv) of the Sales and Use Tax Regulations.

A vendor could not accept a resale or other exemption certificate in good faith, and would be required to collect tax on the sale of tangible personal property or services if the vendor knows the property or services are not purchased for resale, even though a resale or exemption certificate has been timely furnished by the purchaser. See Section 532.4(b)(2)(i) of the Sales and Use Tax Regulations. For instance, in the case of Example 3 above, a vendor would be required to collect tax on the sale of dinnerware and linens if the vendor knows that the purchaser is a restaurant which is not in the business of selling dinnerware and linens. The question of whether a properly completed exemption certificate was accepted in good faith in a particular transaction is a factual question which cannot be determined in an Advisory Opinion. An Advisory Opinion merely sets forth the applicability of pertinent statutory and regulatory provisions to a specified set of facts. Tax

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Law, Section 171, subd. twenty-fourth; 20 NYCRR 2376.1(a); Copelco Leasing Corporation, Adv Op Comm T&F, May 18, 1995, TSB-A-95(15)S.

DATED: November 3, 1999

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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