

TAXABLE STATUS OF SALES BY AN AUCTIONEER OR TRUSTEE
UNDER CHAPTER 7 OF THE BANKRUPTCY CODE

This memorandum is in response to recent inquiries on:

1. whether receipts from sales of personal property at auction under Chapter 7 of the Bankruptcy Code are subject to sales tax.
2. whether the trustee in bankruptcy or the auctioneer who conducts the sale has responsibility for collecting and paying any sales tax due and filing returns.

The following excerpt from an opinion of Deputy Commissioner and Counsel John P. Dugan, issued August 20, 1985, addresses these issues:

Sales tax may be imposed upon a vendor or purchaser of property at a liquidation sale in a bankruptcy case. (State of Wyoming v Sunrise Construction Company, 39BR 668; But see Catlin v State of Maine Bureau of Taxation, 28BR 568; and Babb v State of Oklahoma Tax Commission, 17BR 789.)

Tax Law section 1105 imposes a sales tax on the receipts from every retail sale of tangible personal property, with certain exceptions. A bankruptcy liquidation sale is not so excepted. A retail sale is a sale of tangible personal property to any person for any purpose, other than, inter alia, for resale as such. Tax Law section 1101(b)(4). Thus, a sale at auction is subject to sales tax unless it is for resale, or unless certain other conditions, not here relevant, apply.

A trustee and any other person acting as an agent or in a fiduciary or representative capacity, whether appointed by a court or otherwise, are persons within the meaning of the Tax Law. 20NYCRR 526.2. A person making sales of tangible personal property, the receipts of which are subject to tax, is a vendor. Tax Law §1101(b)(8). Auctioneers also are vendors. 20NYCRR 526.10(a)(1). Persons required to collect tax include every vendor of tangible personal property. Tax Law §1131(1). Thus . . . [the] trustee, and the auctioneer are both required to collect sales tax.

Any person making a taxable sale of tangible personal property under Chapter 7 of the Bankruptcy Code, other than a motor vehicle, who is not otherwise required to register as a vendor must collect the tax on such sale and file a report of casual sale. The report must be filed within twenty days from

the date of sale. Thus, if a trustee who is not a registered vendor makes a sale, the trustee must make a report of casual sale and pay the tax due. An auctioneer presumably is a registered vendor. As such, if the auctioneer makes a sale, he or she is required to file returns and pay any tax due to the State Tax Commission. However, since the auctioneer's authority derives from the trustee, the trustee is still liable to file a return and pay the tax if the auctioneer fails to do so.

Please note that if a motor vehicle is purchased from a trustee who is not a registered vendor, the purchaser should not pay the tax to the trustee, but rather, to authorized personnel at the Department of Motor Vehicles or to the appropriate county clerk's office when the vehicle is registered.