

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-05(6)S
Sales Tax
March 10, 2005

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S040617A

On June 17, 2004, the Department of Taxation and Finance received a Petition for Advisory Opinion from Batesville Casket Company, One Batesville Blvd., Batesville, IN 47006.

The issue raised by Petitioner, Batesville Casket Company, is whether the discount described in the facts of this Petition is deductible from the computation of receipts subject to sales tax.

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

Petitioner is headquartered in Batesville, Indiana and is a subsidiary of Hillenbrand Industries. Petitioner sells burial caskets, cremation urns and related products to funeral directors. Petitioner offers a variety of discounts and rebates to its customers for sales of products shipped to New York. The particular discount that is the subject of this Advisory Opinion is available to customers if payment is made by a specified discount date. Based on the sample customer's monthly statement that was submitted with the Petition, it appears that a 5% discount is granted on the base price if payment is received by the 15th of the first month following delivery as shown on the monthly statement.

Applicable law and regulations

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(3) Receipt. The amount of the sale price of any property and the charge for any service taxable under this article . . . valued in money, whether received in money or otherwise, *including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts....* (Emphasis added)

Section 1105 of the Tax Law provides, in part:

On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax ... upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

Section 1115 of the Tax Law provides, in part:

(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(7) Tangible personal property sold by a mortician, undertaker or funeral director. However, all tangible personal property sold to a mortician, undertaker or funeral director for use in the conducting of funerals shall not be deemed a sale for resale within the meaning of paragraph (4) of subdivision (b) of section eleven hundred one of this chapter and shall not be exempt from the retail sales tax.

Section 526.5(d) of the Sales and Use Tax Regulations provides, in part:

Discounts. (1) Discounts which are granted by a vendor, for the purpose of encouraging prompt payment on an account, known as "early payment discounts" are not deductible from receipts.

Example 1: A vendor grants a purchaser a 2 percent discount for paying the price of a \$100 camera within 10 days, and expects payment of the full price if paid within 30 days. The sales tax, in a 7 percent area, is \$7 on the taxable receipt of \$100, whichever method of payment the customer chooses.

* * *

(2) Discounts which represent a reduction in price, such as a trade discount, volume discount or cash and carry discount are deductible in computing receipts.

Opinion

Petitioner sells funeral related products to New York funeral directors. Sales of these products to funeral directors are not exempt under section 1115(a)(7) of the Tax Law and are otherwise subject to New York State and local sales and use tax. Petitioner offers its customers a 5% discount if payment is made by a specified discount date. Pursuant to section 1101(b)(3) of the Tax Law, this discount, which is an early payment discount, is not considered to be a reduction in the selling price and is not deducted from the taxable receipts. (See *Redman Homes, Inc.*, Adv Op St Tax Comm, Feb 17,1983, TSB-A-83(6)S.) Tax is due on Petitioner's total charge to the customer, including in the amount of such taxable receipt the amount of any early

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payment discount Petitioner allows its purchasers in respect of the purchaser's prompt remittance of the amounts billed.

DATED: March 10, 2005

/s/
Jonathan Pessen
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Technical Services Division

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