

**New York State Department of Taxation and Finance  
Office of Counsel  
Advisory Opinion Unit**

TSB-A-14(30)S  
Sales Tax  
August 22, 2014

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S110518B

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether a single bundled charge for taxable and exempt tangible personal property it sells to its customers is subject to sales tax. Petitioner also asks if its billing method may be viewed as an exempt “inventory replenishment service” or if it may “look through” its own bundled charge to determine the taxable percentage of a particular transaction.

We conclude that, when Petitioner sells both taxable and exempt tangible personal property and issues an invoice to its customer that has a single bundled charge for all the items sold, that charge will be subject to sales tax.

**Facts**

Petitioner is a manufacturer and distributor of medical supplies and equipment operating in every state within the United States. Petitioner bills its customers through its own invoicing system, providing a line-item, detailed description of each product and calculating sales tax in all applicable states based upon a matrix that is driven by this line-item detail. Some of Petitioner’s customers have requested that they be charged on a bundled basis for their purchases of medical supplies and equipment. Using the bundled invoice option, a contracted flat per-day price, established by analyzing a customer's buying requirements over the course of time, would replace invoices that state the actual quantity of products purchased at specific product prices. The subsequent monthly customer billing is determined based on the number of days per month for a particular individual covered by the contract multiplied by the flat per-day rate. This flat fee system provides the health care provider with more predictable budgetary information it requires for business operations. However, this flat rate monthly invoice is not tied directly to the actual quantity of products used, because the actual quantity of products used depends on the individual caregiver and the specific care requirements of each individual covered by the contract. In addition, the invoice bundles items that were individually described and combines them into one consolidated line-item description. This billing method essentially bundles taxable and non-taxable transactions into a single line-item on the customer’s invoice.

The single line-item charge on the invoice does not provide detail of the actual description or quantity of the product or products being purchased by the customer. In fact, it is possible that any of Petitioner's 100,000 products could be sold through the program, depending on the customer's contract with Petitioner. However, once a customer's contract is established, the product mix for that customer does not change during the period of the agreement.

## **Analysis**

Petitioner asks three questions concerning the change in its billing practices.

**Q. 1.** Is the bundled charge subject to tax?

**A.** The entire bundled charge is subject to sales tax if any of the products included in the bundled charge are taxable. Petitioner offers both taxable and non-taxable products for sale. Petitioner's customers have the option to select a product mix from any of the products sold by Petitioner as part of their contracts with the Petitioner. Petitioner bills each customer a single per-day charge, as agreed upon in the contract between Petitioner and its customer. When taxable and exempt items of tangible personal property are sold as a single unit, the tax shall be collected on the total price. *See* 20 NYCRR §§ 527.1(b) & 532.1(b). Thus, when this charge includes the sale of a taxable item, Petitioner must collect tax on the entire per-day charge.

**Q. 2.** Has Petitioner's single line-item charge on an invoice "transformed" purchases by its customers that were previously considered purchases of tangible personal property into the purchase of an "inventory replenishment" service?

**A.** Petitioner's use of a single charge for billing purposes, rather than separate itemized charges for each item sold, does not transform the sale from a sale of tangible personal property to a sale of an "inventory replenishment" service. Petitioner's transaction with its customers continues to be the sale of tangible personal property.

**Q. 3.** Would it be possible for the Petitioner to consider the underlying products included in the single line-item charge? In other words, if the single line-item charge on the invoice is for a mix of items, some of which are subject to State and local sales tax and others of which are exempt, could the tax be prorated based upon the taxability of the underlying products?

**A.** Petitioner may not consider the underlying mix of nontaxable and taxable products when using the single line-item charge to determine the amount of the receipts that are subject to sales tax. The Tax Law does not provide for the prorating of a single charge on an invoice or allow a vendor to allocate tax based on its books and records when it has issued an invoice that fails to separately state charges for tangible personal property subject to tax. *See* Tax Law § 1132(a); *Dynamic Telephone Answering Sys., Inc. v. New York State Tax Commission*, 135 AD2d 978 (3rd Dept 1987) *lv. denied*, 71 NY2d 801 (1988); *See also The Plant Place*, Tax Appeals Tribunal (March 20, 1997); *Lake Grove*

*Entertainment, LLC v. Megna*, DTA No. 821297 (Tax Appeals Tribunal, July 27, 2009),  
*aff'd* 81 AD3d 1191 (3rd Dep't 2011).

DATED: August 22, 2014

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