

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S180427A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED], (Petitioner). Petitioner asks whether amounts charged for the rental of a truck are subject to New York State and local sales tax if a customer provides a *Contractor Exempt Purchase Certificate* with box “A” selected. We conclude, based on the facts presented, that sales tax should be charged and collected on this transaction.

**Facts**

Petitioner is a vendor that rented a truck to a customer. Petitioner indicates that, in conjunction with the rental, its customer provided it with a completed *Contractor Exempt Purchase Certificate* (a “Form ST-120.1”) with the “A” box selected. The “A” box essentially is a statement by a contractor indicating that tangible personal property (“TPP”) is being purchased for use as part of a project for an organization that is exempt from sales tax pursuant to Tax Law § 1116(a) (an “Exempt Organization”)<sup>1</sup>, and that such TPP “will become an integral component part” of a building, structure or real property of the Exempt Organization. Petitioner stated that it has the ST-120.1 on file from this customer in connection with a specific project, and indicates that the truck “was used by the customer to haul dirt onsite from one of their locations and to haul dirt offsite to one of their dumpsites.”

**Analysis**

Tax Law § 1105 imposes sales and use tax on, among other things, retail sales of TPP. *See* Tax Law § 1105(a). This includes rentals of TPP, such as trucks and other motor vehicles. *See* Tax Law § 1101(b)(5) (defining “sale” as including rentals); Tax Law § 1101(b)(6) (defining TPP as “[c]orporeal personal property of any nature”); TSB-A-15(46)S. However, certain sales (or rentals) of otherwise taxable TPP to Exempt Organizations are not subject to State and local sales tax. *See* Tax Law § 1116(a). Likewise, certain purchases of TPP by contractors for use in erecting, repairing, adding to, or altering structures or buildings owned by Exempt Organizations are not subject to sales tax when such TPP becomes “an integral component part” of such structures or buildings. *See* Tax Law §§ 1115(a)(15), (16); 20 NYCRR 541.3(d)(2)(i). Otherwise, and unless a contractor is acting as an agent of an Exempt Organization, sales of TPP that does not become an integral component part of an Exempt Organization’s real property, or that is simply used or consumed by a contractor while working for an Exempt Organization, are subject to tax. *See* 20 NYCRR 541.3(d)(2)(iv).

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<sup>1</sup> The Petitioner did not provide any information regarding the exempt organization or the customer’s relationship with the exempt organization.

Petitioner indicates that the TPP purchased in this case (i.e., the truck its customer rented) was used by its customer “to haul dirt onsite from one of their locations and to haul dirt offsite to one of their dumpsites.” It appears, therefore, that this TPP is equipment that Petitioner’s customer itself used to do work for an Exempt Organization, and is not TPP that became a component part of a structure, building or real property owned by the Exempt Organization. Further, there is no indication that Petitioner’s customer rented the truck as an agent of an Exempt Organization. Accordingly, the truck rental in this case is not exempt from sales tax.

Petitioner, however, indicates that its customer provided it with a Form ST-120.1 with the “A” box selected. It is not clear whether this form was provided to Petitioner as a blanket certificate for multiple purchases, or whether it was given to Petitioner specifically for the truck rental at issue. In either case, vendors who accept exemption certificates (including a Form ST-120.1) may be relieved of liability for the failure to collect sales tax with respect to a transaction when such certificate is accepted within 90 days of the delivery of the TPP at issue, and when such certificate is accepted in good faith. *See* 20 NYCRR 532.4(b)(2). A certificate is “accepted in good faith” when, upon the exercise of reasonable ordinary due care, a vendor has no knowledge that it is false or fraudulently presented. *See* 20 NYCRR 532.4(b)(2)(i). In this instance, the Form ST-120.1 that was given to Petitioner indicates that the TPP being purchased would, among other things, become an integral component part of a structure, building or real property owned by an exempt organization. Although the truck is TPP, there is no basis for Petitioner to conclude that the truck would have (or did) become a component part of an Exempt Organization’s building, structure, or real property. Thus, Petitioner could not have accepted the Form ST-120.1 for the truck rental in this case in good faith. Therefore, Petitioner should collect tax from the customer on this purchase.

DATED: June 5, 2018

/S/  
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DEBORAH R. LIEBMAN  
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.