

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. S180118A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether the locally imposed fee that covered stores in Suffolk County are required by law to charge customers for carryout bags is subject to state and/or local sales tax under Articles 28 and 29 of the Tax Law. We conclude that such a fee is not subject to sales tax.

Facts

The Suffolk County Legislature enacted Local Law No. 27-2016, entitled Local Law to Reduce the Use of Carryout Bags in Retail Sales (“Local Law”). This Local Law took effect on January 1, 2018. The Local Law was passed to encourage consumers to bring and use their own recyclable carryout bags for shopping by imposing a fee of five cents for each carryout bag provided by retail stores. The Local Law states that all covered stores are required to collect such a fee for each carryout bag provided to any customer when the customer makes a purchase and does not bring his or her own carryout bag.

The Local Law defines a covered store as a store engaged in retail sales of “personal, consumer or household goods . . . that provide carryout bags to customers in which to place purchased items. This term does not include food service establishments located outside of grocery stores, supermarkets, convenience stores or foodmarts.” The Local Law defines carryout bags as:

[A]ny bag that is provided by a covered store to a customer at the point of sale and is used to carry goods from such store, provided, however, that such term shall not include any of the following: (i) a bag without handles used to carry produce, meats, poultry, fish, dairy, dry goods or other non-prepackaged food items to the point of sale within a covered store or to prevent such food items from coming into direct contact with other purchased items; (ii) a bag provided by a pharmacy to carry prescription drugs; (iii) a garment bag; or (iv) any other bag exempted from the provisions of this local law.

The Local Law states that covered stores are allowed to retain the fee collected from the customer for the carryout bag. The covered store is required to separately itemize the fee for the carryout bag pursuant to the Local Law on the receipt provided to the customer.

Analysis

Petitioner asks whether the carryout bag fee is subject to State and/or local sales taxes under Articles 28 and 29 of the Tax Law. Under § 1105(a), sales tax is generally imposed on the receipts from the sale of tangible personal property. The fee at issue here is a locally mandated charge for the use of a carryout bag intended to encourage the use of reusable bags. We conclude that does not constitute the sale of tangible personal property. Under these specific circumstances, the carryout bag fee is not subject to State or local sales taxes.

DATED: July 25, 2018

/S/

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.