

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance (“the Department”) received a Petition for an Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether its crating charge that is separately itemized on invoices to customers is subject to sales tax.

FACTS

Petitioner sells and distributes terrazzo flooring supplies and natural stone countertop materials to customers in New York. The flooring supplies and natural stone countertop materials as sold by Petitioner are subject to sales tax in New York. Petitioner builds a crate and packages the flooring supplies or stone countertop materials into the crate for transportation and delivery to customers. Petitioner lists a separate “crating charge” on its invoices.

ANALYSIS

Tax Law § 1105(a) imposes a sales tax upon “receipts from every retail sale of tangible personal property.” The term “receipt” is defined, in relevant part, as “[t]he amount of the sale price of any property and the charge for any service taxable under this article ... and also including any charges by the vendor to the purchaser for shipping or delivery.” Tax Law § 1101(b)(3); *see* 20 NYCRR 526.5. The Department’s Regulations reiterate that a vendor’s receipt includes shipping or delivery charges where the sale of the property is subject to tax regardless of whether the vendor separately states such charges on an invoice. *See* 20 NYCRR 526.5(g). The terms “shipping” and “delivery” also include charges for handling and similar charges. *See* TB-ST-838, *Shipping and Delivery Charges*.

Further, sales tax is generally a destination tax, meaning that the incidence and rate of tax is controlled by where the taxable service or property is delivered to the customer. *See* 20 NYCRR 525.2(a)(3).

The Petitioner’s sale of flooring and countertop materials is subject to sales tax. Building a crate and packing those materials for transportation involves handling of such items in connection with their delivery. Petitioner must collect tax on such handling charge, referred to by Petitioner as a “crating charge,” as part of the total receipt subject to tax if delivery occurs in

New York, regardless of whether the charge is separately stated on invoices. *See* 20 NYCRR 526.5.

DATED: November 3, 2020

/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.