

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-20(10)S
Sales Tax
June 2, 2020

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance (“the Department”) received a Petition for Advisory Opinion from [REDACTED] (hereinafter “Petitioner”). Petitioner asks when it should remit sales tax to New York State when one of its customers purchases a wedding dress.

FACTS

Petitioner owns and operates a bridal shop. A customer of the shop has two options when purchasing a wedding dress: (1) pay a 50% non-refundable down-payment on the purchase of a dress when the dress is originally chosen, and pay the balance upon completion of the alterations and fitting of the dress; or (2) pay the entire non-refundable purchase price up front, including sales tax. Once an option is chosen, the customer’s dress is ordered from the manufacturer and shipped to Petitioner’s store. When the dress is received by the store, alterations to the dress are made (if needed); once the dress is complete, the customer pays any outstanding balance due and takes possession of the dress. Transfer of title of the dress occurs when customer has fully paid for the dress. Petitioner seeks guidance on when to remit the sales tax it collects on the sale of the dress in New York State.

ANALYSIS

Tax Law §1105(a) states that sales tax is imposed upon the receipts from every retail sale of tangible personal property, except as otherwise provided.

The words “sale” or “purchase” mean “any transaction in which there is a transfer of title or possession or both of tangible personal property for a consideration. 20 NYCRR 527.1(a). Sales tax is imposed on the receipts from “every retail sale of tangible personal property delivered by the vendor to the purchaser...” 20 NYCRR 527.1(a).

Under the first scenario, a customer makes a 50% down-payment on a dress and Petitioner then orders the dress. Once the dress is received by Petitioner, alterations (if necessary) are made to the dress. The customer does not yet have title to or possession of the dress. The customer obtains title to the dress only when the customer has fully paid for the dress. The customer takes possession of the dress after it is fully paid for and alterations are complete. Therefore, a sale occurs when title of the dress is transferred to the customer, i.e., when the dress is fully paid for. Sales tax accrues and Petitioner must collect the tax at that time.

Under the second scenario, a customer pays the entire non-refundable sales price for the dress up front, including sales tax. In that case, the customer takes title to the dress when this full payment is made. Even if a customer leaves a dress with Petitioner for alterations, with the intention of taking possession of the dress at a later date, a sale has still occurred because title has passed to the customer. Therefore, Petitioner must collect all sales tax due from the customer when it receives the customer's full payment for the dress.

Petitioner must pay the sales tax collected to the Department on or before the due date for the filing of the return for the reporting period in which the sale occurred. 20 NYCRR 533.4.

DATED: June 2, 2020

/S/

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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.