



Advisory Opinion: TSB-A-24(45)S

The Department of Taxation and Finance received a Petition for Advisory Opinion [REDACTED] (“Petitioner”). Petitioner, which sells tangible personal property to purchasers in New York, asks whether its purchase of certain order fulfillment services in New York and its storage of inventory on the premises of the person providing those services cause it to qualify as a vendor and thus require it to collect sales and use tax. We conclude that, if Petitioner does not otherwise qualify as a vendor, neither its purchase of the services at issue, nor its storage of inventory on the premises of the person providing those services, cause it to qualify as a vendor and thus be under a duty to collect sales and use tax.

Facts

Petitioner is an online retailer of consumer and household products that is organized under the laws of Texas and headquartered in Colorado. When Petitioner began operations, it handled all sales order fulfillment from its headquarters in Colorado. Recently, it hired a national provider of order fulfillment services, Company X. Through its fulfillment platform, Company X stores Petitioner's inventory in select fulfillment centers throughout the United States and draws on this inventory to fulfill sales orders on behalf of Petitioner. Company X handles billing and collection for these sales as well, retaining a fee for its services and returning the balance to Petitioner.

Petitioner's only presence in New York is the storage of inventory at Company X's warehouses. Through Company X's order fulfillment service, Petitioner stores inventory in New York at Company X's fulfillment centers. Company X is responsible for picking the purchased items from Petitioner's inventory, packaging them, and shipping the items to Petitioner's customers. Company X hires common carriers, who are unrelated to it or Petitioner, to perform the shipping. In addition, Company X's order fulfillment service includes the following services: (i) accepting purchase orders electronically or by mail, telephone, fax or internet; (ii) responding to consumer correspondence and inquiries electronically or by mail, telephone, fax or internet; and (iii) billing and collection activities. Petitioner stipulates that Company X and Petitioner are not “affiliated persons” within the meaning of that term in Tax Law § 1101(b)(8)(v)(B). Company X provides each of these services for Petitioner in New York and provides no other services for Petitioner in New York. Petitioner has no other presence or activity in New York.

Analysis

The Tax Law imposes tax on the retail sale or use of tangible personal property and certain enumerated services. See Tax Law § 1105(a), (b), and (c). The sales tax is a tax on the purchaser, to be collected by “persons required to collect tax,” which include vendors and marketplace providers. Tax Law §§ 1101(b)(8), 1101(e)(1), 1132(a)(1). Tax Law § 1101(b)(8)(v) excludes from the definition of a vendor a person who is not otherwise a vendor “who purchases fulfillment services carried on in New York by a person other than an affiliated person” or who “owns tangible personal property located on the

premises of an unaffiliated person performing fulfillment services for such person.” Tax Law § 1101(b)(18) defines “fulfillment service” to include the following activities “performed by an entity on its premises on behalf of a purchaser”:

(i) the acceptance of orders electronically or by mail, telephone, telefax or internet;

(ii) responses to consumer correspondence and inquiries electronically or by mail, telephone, telefax or internet;

(iii) billing and collection activities; or

(iv) the shipment of orders from an inventory of products offered for sale by the purchaser.

According to Petitioner, Company X’s activities on behalf of Petitioner in New York are limited to the above activities. Thus, Company X is performing fulfillment services on behalf of Petitioner. Because Company X stipulates that it is an unaffiliated person with regard to Petitioner, Petitioner’s purchase of fulfillment services from Company X and its storage of inventory on Company X’s property in New York do not make Petitioner a vendor for sales tax purposes. See Tax Law § 1101(b)(8)(v).

However, effective June 1, 2019, a marketplace provider is required to register for sales tax purposes and collect sales tax for all sales of tangible personal property it facilitates if it has a physical presence in New York State if its gross receipts from sales it made or facilitated of tangible personal property delivered in New York exceeds \$500,000 and it made or facilitated more than 100 such transactions. A sale is facilitated by a marketplace provider when it provides the forum in which, or by means of which, a sale takes place or an offer of sale is accepted, including an internet web site, catalog, shop, store, booth or similar forum; and it collects the receipts paid by a customer to a marketplace seller for a sale of tangible personal property, or contracts with a third party to collect the receipts for sales of such property. See Tax Law § 1101(e)(1).

Here, Company X provides an internet platform on which sales of Petitioner’s tangible personal property are made, and it collects the receipt from such sales from customers. Company X will be considered a marketplace provider and will be required to register and collect sales tax if the total gross receipts from all the sales of tangible personal property in New York that it made or facilitated in the preceding 4 sales tax quarters exceeded \$500,000 and it made or facilitated more than 100 such sales. See TSB-M-19(2.1)S. If Company X qualifies as a marketplace provider, it must collect sales tax on all sales of tangible personal property to New York customers that it makes or facilitates, including sales of Petitioner’s products, regardless of whether the services provided to Petitioner are limited to fulfillment services as defined in Tax Law § 1101(b)(18).

DATED: October 10, 2024

/s/

MARY ELLEN LADOUCEUR
Principal Attorney

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.