



**Department of
Taxation and Finance**
Office of Counsel

TSB-A-24(47)S
Sales Tax
October 16, 2024

Advisory Opinion: TSB-A-24(47)S

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] ("Petitioner"). Petitioner asks whether it can sell panels to a customer without collecting sales tax if the customer provides a New York State and Local Sales and Use Tax Certificate of Capital Improvement (ST-124).

We conclude that petitioner's sales of uninstalled panels to customers are subject to sales and use tax and petitioner's customer cannot use a Form ST-124 to avoid paying the tax on such sales.

Facts

Petitioner is a manufacturer and building subcontractor who manufactures, sells, and installs panels. One of petitioner's customers insists that Form ST-124 relieves him of the duty to pay sales tax on his purchases of materials from petitioner. Petitioner asks whether sales tax is owed on its sales of materials to its customer.

Analysis

Tax Law § 1105(a) imposes a tax on every retail sale of tangible personal property unless otherwise excluded, excepted, or exempted. Tax Law § 1105(a). A "retail sale" is "[a] sale of tangible personal property to any person for any purpose, other than ... for resale as such" (Tax Law § 1101[b][4][i] [A]).

Petitioner's sales of materials to its customer are sales of tangible personal property subject to sales and use tax. Accordingly, petitioner is required to collect the taxes due on such sales. The instructions on the ST-124 form clearly states that "[a] contractor, subcontractor, property owner, or tenant, may not use this certificate to purchase building materials or other tangible personal property tax free."

DATED: October 16, 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.