

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-81(68)S
Sales Tax
December 30, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810923B

On September 23, 1981 a Petition for Advisory Opinion was received from F. Staal, Inc., 743 Fifth Avenue, New York, New York 10022.

At issue is Petitioner's liability for the collection of sales tax on sales of jewelry to foreign customers who are in the United States only temporarily.

Section 1105(a) of the Tax Law imposes a tax on the "receipts from every retail sale of tangible personal property . . ." made in New York. Petitioner's retail sales of jewelry to customers in New York are therefore generally subject to tax, which is required to be collected by Petitioner.

Petitioner proposes the utilization of a certificate, to be prescribed pursuant to Section 1132(c) of the Tax Law, by means of which the customer's liability for tax would be negated. However, Section 1132(c) provides only for certificates establishing sales as being for resale or for uses exempted under Section 1115(a) of the Tax Law. The situation here under discussion would therefore not be amenable to such treatment.

Ammex Warehouse Co., Inc. v. Procaccino, 85 Misc. 2d 327, aff'd 55 A.D. 2d 535, cited by Petitioner, is not controlling herein. That case dealt with a situation where sales of bonded liquor, cigarettes and other merchandise, originating outside New York, were made at or near the U.S.-Canadian border. The entire transaction was "supervised by and under the control of federal governmental officers to insure that the goods . . . [were] taken across the border into Canada." Id., at 336. Further, the bond under which the vendors operated was not relieved until the merchandise was actually landed in Canada. The court held, accordingly, that "no incident occurs in New York which is subject to the excise tax sought to be imposed." Id. In the present case, of course, there is a completed sale within New York, wholly subject to New York's jurisdiction and, accordingly, subject to sales tax.

It is to be noted that there is a procedure which will render exempt from tax certain sales made to an individual about to depart from the United States. This is the procedure set forth in the Office of the Comptroller, City of New York Bulletin, 1962-1 (as amended), which is recognized by the State Tax Commission as applicable to both the State and New York City sales taxes. The text of such Bulletin reads as follows:

"FACTS: A retail vendor sells tangible personal property to a customer who is about to leave the City of New York on a trip to a foreign country. The customer requests that the property purchased by him be delivered in the City of New York on board a ship or plane, as the case may be, on which the customer is to be a passenger. The vendor delivers the property to a duly authorized representative of the carrier and obtains a

receipt from the carrier in which it is set forth that the carrier agrees that the property delivered to its representative will not be turned over to the purchaser until after the conveyance leaves the territorial limits of the United States. The carrier turns over the property to the purchaser on board the conveyance outside the territorial limits of the United States.

HOLDING: A sale of tangible personal property delivered in the manner described above is subject to the Sales Tax, and the vendor is required to charge and collect the tax upon the receipts from such sale except where:

(a) the customer is an alien returning to a foreign country, or

(b) the customer is a resident alien or an American citizen going abroad, including a member of the armed forces of the United States, and the property purchased by such customer will be sold or otherwise disposed of by him in a foreign country and will not at any time thereafter be returned by him to the United States.

Sales described in (a) and (b) above are considered to be export sales exempt from the tax. A retail vendor claiming to have made such sales is required to obtain and make available to the Comptroller satisfactory evidence in support of the claim that the property sold was an export. Such evidence shall be in the form of a certificate furnished to the vendor by the carrier certifying that the carrier acknowledges receipt of the property from the vendor and certifying that the property will not be turned over to the purchaser until after the plane or ship, as the case may be, has reached a point outside the territorial limits of the United States.

In addition, with respect to a sale made to a non-resident alien as described in (a) above, the vendor shall obtain from the customer a certificate signed by the customer, which shall set forth the latter's name, foreign residence address, and that he is not a resident or a citizen of the United States, the nature of the property purchased and the purchase price, the name and address of the vendor, identification of the carrier to which said property is delivered, the date and time of the scheduled departure and the destination of the customer, and a statement that the certificate is made for the purpose of showing that the purchase is made for export and is therefore not subject to the New York City Sales Tax.

With respect to a sale made to a resident alien or an American citizen, as described in (b) above, the vendor shall obtain from the customer a certificate signed by the customer, which shall set forth the latter's name and residence in the United States, the nature of the property purchased and the purchase price, the name and address of the vendor, identification of the carrier to which said property is delivered, the date and time of the scheduled departure, and the destination of the customer, and a statement to the effect that the property purchased will be sold or otherwise disposed of by him in a foreign country, and that he will not, at any time thereafter, return the property to the United States. If the property is to be disposed of in a foreign country in any manner other than by sale, the certificate shall state the details with respect thereto. It shall also contain a statement that it is made for the purpose of showing that the purchase is made for export and is therefore not subject to the New York City Sales Tax.

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If a vendor fails to obtain and make available the above-described evidence, the sale shall be deemed to be subject to tax."

DATED: December 10, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau