

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

TSB-A-82(18)S
Sales Tax
May 26, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S820505F

On May 5, 1982, a Petition for Advisory Opinion was received from Gaetano Associates-Limited Partnership, 311 Turner Street, Utica, New York 13501.

The issue here raised is whether the sales tax imposed in the City of Utica (effective June 1, 1982) will be required to be collected on the receipts from retail sales made in stores contained in a mall located partly within and partly without the City of Utica.

Petitioner owns a retail outlet mall which is located within two counties, Oneida and Herkimer. The portion of the mall which is located in Oneida County is also contained within the City of Utica. The mall consists of a number of separate buildings connected by hallways. Outlet stores located in the various buildings are leased to commercial tenants and operated as retail establishments. All but one of the buildings are located wholly within one county or the other. One of the buildings is divided by the county line, but all of the stores contained in such building are wholly located in Herkimer County.

Section 1105(a) of the Tax Law imposes the State 4% sales tax on the receipts from retail sales of tangible personal property made anywhere within the State. No such tax is imposed by Herkimer County or by any subdivision thereof. Oneida County also imposes no such tax, nor does the City of Utica. However, pursuant to Ordinance Number 48 of the City of Utica, adopted on April 8, 1982 and effective June 1, 1982, the City of Utica will impose, among others, a tax substantially similar to that imposed under section 1105(a) of the Tax Law, applicable to retail sales made within the City of Utica, at a rate of 1½%.

Accordingly, all of the vendors making sales in stores in Petitioner's mall which are located within Herkimer County must collect only the 4% State sales tax. Vendors making sales in stores in Petitioner's mall which are located within the City of Utica must presently collect the 4% State sales tax and, as of June 1, 1982, will be required to collect, in addition, the 1½% tax imposed by the City of Utica. It may be noted that the question of which sales tax (or taxes) is to be imposed with respect to a given transaction is determined according to the point of delivery. Thus, where a sale is made by a vendor located in one of the stores in Petitioner's mall but where delivery is made at a point outside of that store, as where goods are delivered to a customer's home, the applicable sales tax is that imposed by the taxing jurisdiction or jurisdictions in which such delivery to the customer occurs. 20 NYCRR 525.2(a)(3).

Petitioner additionally inquires, as a hypothetical question, as to the application of the above-described sales tax statutes where a store is itself divided by a line separating two taxing jurisdictions. In such an instance the receipts from any given sale would be subject to the tax or taxes imposed by the jurisdiction in which the cash register on which such sale was recorded is located.

DATED: May 11, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau