

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

TSB-A-83(18)S (Corrected)
Sales Tax
April 1, 1983

This replaces TSB-A-83(18)S, which was previously distributed and should be destroyed.

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S830215A

On February 15, 1983 a Petition for Advisory Opinion was received from Bainbridge Memorial Works, Inc., 92 North Main Street, Bainbridge, New York 13733.

The issue raised is whether discounts offered to Petitioner by its granite supplier are subject to sales tax.

Invoices submitted by Petitioner contain the following provision:

"TERMS 2% 15 DAYS NET 30 UNLESS SPECIFIED

25% 15 DAYS"

The first line is printed on the invoice, while the second line is typed in the space below the first line.

Section 1105(a) of the Tax Law imposes the State sales tax on the receipts from retail sales of tangible personal property.

Section 1101(b)(3) of the Tax Law defines the term "receipt" as "the amount of the sale price of any property . . . without any deduction for expenses or early payment discounts"

Section 526.5(d) of the Sales and Use Tax Regulations further provides that: "(1) Discounts which are granted by a vendor for the purpose of encouraging prompt payment on an account known as 'early payment discounts' are not deductible from receipts.

(2) Discounts which represent a reduction in price, such as a trade discount, volume discount or cash and carry discount are deductible in computing receipts."

Petitioner contends that the discount in question is a trade discount, and has submitted a statement from its supplier to the effect that the supplier considers the discount to be a "trade discount." However, trade discounts "represent the difference between a seller's list prices and the prices at which he actually sells goods to the trade, as distinguished from cash discounts which is a deduction from the price at which goods are billed to the purchaser that the seller allows for payment of the bill within a certain time." Leonard v. United States, 7 F. Supp. 295. The subject

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discount by its terms is applicable only upon payment within a specified time. Accordingly, the supplier's characterization to the contrary notwithstanding, the discount constitutes not a trade discount but an early payment discount, and as such is includible in the receipt subject to tax.

DATED: March 16, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau