

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

TSB-A-85(55)S
Sales Tax
November 7, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S850617B

On June 17, 1985, a Petition for Advisory Opinion was received from Daniel Goldberg, C.P.A., 151 West 40th Street, New York, N.Y. 10018.

The issue raised is whether the Tax Law requires a vendor, who makes only taxable sales, to retain a detailed record of transactions on cash register tapes.

Petitioner inquires on behalf of one of its clients whether, for the purpose of analyzing sales, properly dated cash register summaries of each days receipts would be an acceptable substitute for the complete cash register tapes. Petitioner's client lacks storage space and would like to discard all cash register tapes except for a test period, to be designated by the Tax Department, within each calendar year.

Section 1135 of the Tax Law sets forth the record-keeping requirements applicable to vendors under the sales tax, in relevant part, as follows:

Every person required to collect tax shall keep records of every sale... and of all amounts paid, charged or due thereon, in such form as the tax commission may by regulation require...

Section 533.2(b) of the Sales and Use Tax Regulations reads, in part as follows:

(b) Sales records. (1) ... The records must contain a true copy of each:

(i) sales slip, invoice, receipt, contract, statement or other memorandum of sale;

(ii) guest check, hotel check, receipt from admissions such as ticket stubs, receipts from dues; and

(iii) cash register tape and any other original sales document.

(2) The sales record either must provide sufficient detail to independently determine the taxable status of each sale and the amount of tax due and collected thereon or may be substantiated by analysis of supporting records.

(i) Cash register tapes which identify the individual items sold, selling price and the tax due are sufficient to independently determine the taxable status of each sale and the amount of tax due thereon. (20 NYCRR 533.2(b); Emphasis added)

Section 533.2(a) of the Sales and Use Tax Regulations further provides, in part:

(2) Upon audit by the department, or at such other times as the department requests, the vendor or user must present all the records described in this Part, kept in a manner suitable to determine the correct amount of tax due. . . .

(3) All records required to be kept by this Part shall be preserved for a period of three years from the due date of the return to which they relate or the date of filing, if later, . . . and longer than three years if their contents are material to any period open or extended pursuant to statute, or in any action or proceeding pending before the Tax Commission or in a judicial proceeding or action." (20 NYCRR 533.2(a)(2) and (3); Emphasis added).

Section 533.2(g) of the Sales and Use Tax Regulations provides, in part:

(g) Incorrect or insufficient records. (1) If the records of a taxpayer are determined to be incorrect or insufficient, the return filed on the basis of information obtained from such records may be deemed to be incorrect or insufficient. The Tax Commission may then determine the amount of tax due the State by using any information available, whether at the taxpayer's place of business or from any other source.

(2) The records of a taxpayer may be deemed to be incorrect or insufficient if:

(i) the records are not maintained in accordance with the provisions of this section;" (20 NYCRR 533.2(g)).

Section 533.2(a)(4) of the Sales and Use Tax Regulation provides:

(4) Guest checks must be retained for at least three years, unless an application is filed with the District Office Audit Bureau and permission is granted by the bureau to destroy the guest checks before the expiration of the three-year statute of limitation. (20 NYCRR 533.2(a)(4)).

The provisions of regulation section 533.2(a)(4) are applicable only to guest checks and are not applicable to cash register receipts. At this time, no provisions of the regulations authorizes the early destruction of cash register receipts.

In accordance with the foregoing, daily summaries of sales without the supporting detailed transactions recorded on the cash register tapes would not constitute proper and adequate records. (See also: P. Hackett Hardware Company, Inc., Advisory Opinion, August 5, 1982, TSB-A-82(25)S and Technical Services Bureau Memorandum, July 15, 1981, TSB-M-81(9)S).

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It is therefore essential for Petitioner's client to retain the cash register tapes, and all other records relating to returns filed, for the statutory three year period of limitation (Tax Law 1147[b]) for determination and assessment of additional tax.

DATED: September 10, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth herein.