

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

TSB-A-88(27)S
Sales Tax
May 11, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S880121A

On January 21, 1988, a Petition for Advisory Opinion was received from D.C. Distributing Inc. 1047 Mt. Read Boulevard, Rochester, New York 14606.

Petitioner raises several issues: (1) What constitutes a properly completed sales tax exemption certificate; (2) Who is responsible for collecting sales tax when a properly completed certificate is received; (3) When Petitioner acts as a contractor or installer and receives a properly completed Capital Improvement Certificate, what is his responsibility for collecting or paying sales tax; and (4) How can Petitioner be sure that the Certificate of Capital Improvement he receives has been properly completed?

Petitioner is a wholesaler of siding and windows who sells such products to other wholesalers and to individual contractors. On occasion, Petitioner, itself, will act as a contractor or installer of such products.

The following provisions of the Tax Law and sales tax regulations are applicable to Petitioner's business activities.

Section 1132(c) of the Tax Law states, in part:

For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all receipts for property or services of any type mentioned in subdivisions (a), (b), (c) and (d) of section eleven hundred five . . . are subject to tax until the contrary is established, and the burden of proving that any receipt . . . is not taxable hereunder shall be upon the person required to collect tax or the customer. Unless (1) a vendor shall have taken from the purchaser a certificate in such form as the tax commission may prescribe . . . to the effect that the property or service was purchased . . . for some use by reason of which the sale is exempt from tax under the provisions of section eleven hundred fifteen, . . . the sale shall be deemed a taxable sale at retail. Where such a certificate or statement has been furnished to the vendor the burden of proving that the receipt . . . is not taxable . . . shall be solely upon the customer . . .

The meaning of such provision is explained in the Sales and Use Tax Regulations, as follows:

Reg. Sec. 532.4 Presumption of Taxability. . .

(a) General. It shall be presumed that all receipts from sales of property . . . of any type mentioned in subdivision (a) . . . of section 1105 of the Tax Law [viz., sales of tangible personal property] are subject to tax until the contrary is established.

(b) Burden of proof. (1) The burden of proving that any receipt . . . is not taxable shall be upon the person required to collect tax or the customer.

(2) When the vendor makes a sale which is exempt because the property purchased is for . . . an exempt use . . ., as proof of the exemption the vendor shall, at the time of sale, obtain a properly completed exemption certificate from the purchaser and retain the certificate in his files. Such certificate satisfies the vendor's burden of proof.

(3) When the vendor is furnished with a properly completed exemption certificate, the burden of proving a transaction is not taxable shall be solely upon the customer.

(4) The vendor shall not be relieved of the burden of proof when no exemption certificate or an improper certificate has been furnished him, or when the vendor has actual knowledge that a certificate furnished is false or fraudulent.

(c) Use of exemption certificates. (1) To enable purchasers entitled to an exemption from the sales and compensating use tax to avail themselves of the exemption and for administrative purposes, the Department of Taxation and Finance provides various exemption forms, the use of which is governed by the conditions under which they are issued. A vendor is not required to collect tax from a purchaser who furnished a properly completed exemption certificate.

(2) A certificate is considered to be properly completed when it contains the:

(i) date prepared;

(ii) name and address of purchaser;

(iii) name and address of vendor;

(iv) identification number of purchaser as shown on the certificate of authority, or exempt organization number as shown on the exempt organization certificate. However, a farmer's exemption certificate does not have such a number.

(v) signature of purchaser or purchaser's authorized representative; and

(vi) any other information required to be completed on the particular form. (20 NYCRR 532.4)

The Sales and Use Tax Regulations state, in relevant part: "Any contractor who is making a capital improvement must pay a tax on the cost of materials to him, as he is the ultimate consumer of the tangible personal property. 20 NYCRR 527.7(b) (5).

Additionally, the Sales and Use Tax Regulations provide:

541.13 Retailers engaged in contracting. (a) Retailers, such as department stores, when installing tangible personal property which constitute a capital improvement to real property of their customer are acting as contractors.

(b) Retailers when installing tangible personal property which constitute a capital improvement are liable for the use tax based upon their cost for the property at the State and local rate in effect in the jurisdiction where the tangible personal property is installed.

Example 1: A retailer with a hardware and plumbing department, sells hot water tanks with or without installation. When the tank is sold, installed by the retailer and the customer presents a properly completed certificate of capital improvement to the retailer, the retailer is acting as a contractor and is liable for the compensating use tax based upon its cost for the tank. The retailer must report the cost of the hot water tank as a purchase subject to use tax on its sales tax return.

Accordingly, an exemption certificate is properly completed when all of the information requested on it is furnished and the certificate is signed by the purchaser or the purchaser's authorized representative. A vendor is not relieved of his duty to collect tax if he has actual knowledge that a certificate is false or fraudulent. However, if a vendor has no such actual knowledge, he is under no duty to interrogate a customer to insure that an exemption certificate which is properly completed on its face is not false or fraudulent.

When a properly completed exemption certificate is received by the vendor not later than 90 days after delivery of the property or the rendition of the service, it is the purchaser alone who is responsible for any tax that may be due. Petitioner is not required to collect sales tax from its customer under these circumstances.

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Additionally, when Petitioner performs a capital improvement and receives a properly completed capital improvement certificate from its customer, Petitioner is responsible for paying use tax on its cost of the materials used in the capital improvement. Petitioner is not required to collect sales tax from its customer under these circumstances.

DATED: May 11, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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