

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

TSB-A-88(34)S
Sales Tax
June 24, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S880203A

On February 3, 1988, a Petition for Advisory Opinion was received from Bay Shore Warehouse, Inc., 265 Marcus Blvd., Smithtown, New York 11787.

The issue raised is whether purchases of forms and selling supplies by a franchisee doing business in New York State from its out-of-state franchisor are subject to sales or use taxes if they are used for interstate commerce transactions.

Petitioner, a mover, is engaged in local, intrastate and interstate transportation. The latter operations are conducted under a franchise agreement with an out-of-state van line who requires franchisees to use its forms and selling supplies. The franchisor sells these materials to the Petitioner who takes delivery in New York State. The franchisor does not collect sales tax on such sales.

Aware of certain tax exemptions available to the trucking industry for the purchase or rental of trucks or tractor-trailers (Tax Law §1115(a) 22 and 26) and packing materials (Technical Services Bureau Memorandum TSB-M-82(22)S), Petitioner asks whether forms and selling supplies also qualify for exemption when used for interstate moves.

Sales tax is imposed on the receipts, unless specifically exempt, from every retail sale of tangible personal property. Tax Law §1105(a). A retail sale is defined as "a sale of tangible personal property to any person for any purpose, other than for resale as such" Tax Law §1101(b)(4)(i). The state and local use taxes complement the sales taxes; they are due upon in-state use by a New York resident of taxable items on which sales tax has not been paid because an in-state or out-of-state vendor failed to collect it. 20 NYCRR 531.1, 531.3.

Forms and selling supplies (except certain packing materials discussed below) used in business transactions conducted from New York State locations are not exempt from tax. It is not relevant for determining taxability whether such property is delivered from another state or brought into the State by the purchaser, nor is it material that it may accompany shipments to another state. Tax liability is established because employment of the property in New York based business operations constitutes "use within this state" pursuant to Tax Law §1101(b)(7) and §1110.

Purchases, by a mover, of packing material that becomes property of the customer are not taxable, but only if:

- (1) the mover states charges for such packing material separately on all customer billings - without regard to move destination - and
- (2) the mover collects sales tax on charges for such packing material when used in moves terminating in New York State.

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When purchasing exempt packing material the mover must give a properly completed Resale Certificate (Form-120) to the supplier. The mover may request a refund of tax paid on packing material that is later resold. Technical Services Bureau Memorandum Transportation and Related Services Provided by Movers, August 17, 1982, TSB-M-82(22)S.

Packing materials that do not become property of the customer are taxable when purchased by the mover. Accordingly, Petitioner's purchases of such materials and other selling supplies as well as business forms are subject to New York State and local sales or use taxes. Untaxed out-of-state purchases of supplies subject to tax must be reported on the sales tax return covering the date of purchase in the space designated "purchases subject to use tax".

DATED: June 24, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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