

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

TSB-A-90(39)S
Sales Tax
August 7, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S900418B

On April 18, 1990 a Petition for Advisory Opinion was received from Sharon P. Sheinfeld, c/o Richard A. Eisner & Company, 575 Madison Avenue, New York, New York 10022.

The issue raised by Petitioner, Sharon P. Sheinfeld, is whether a painting contractor when claiming a credit for New York State sales tax paid on purchases and supplies pursuant to Section 1119(c) of the Tax Law, for services sold for resale can accept a Resale Certificate (Form ST-120) in good faith for the purposes of claiming said credit.

Petitioner is a painting contractor who pays sales tax on all purchases of materials and supplies. Petitioner's services include both capital improvements and repairs performed for exempt organizations and non-exempt customers.

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 Section 532.4 of the Sales and Use Tax Regulations, as follows:

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)

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. Saf-Tee Plumbing Corp. v. Tully, 77 AD2d 1.

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Although a Contractor Exempt Purchase Certificate is the correct certificate to be used in the above transaction, as long as the Resale Certificate received by Petitioners' client is properly completed, he may accept it in good faith.

DATED: August 7, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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