

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

TSB-A-95 (15)S
Sales Tax
May 18, 1995

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940810B

On August 10, 1994, a Petition for Advisory Opinion was received from Copelco Leasing Corporation, 1700 Suckle Plaza, Pennsauken, NJ 08110.

The issues raised by Petitioner, Copelco Leasing Corporation, are:

1. Whether payments received from a lessee prior to June, 1990 in conjunction with the lease of motor vehicles, were subject to State and local sales and use taxes and if so was the fact that the vehicles were registered by the lessee in New York sufficient evidence that the sales tax due was paid directly by the lessee to the Department of Motor Vehicle.
2. Whether Petitioner is relieved from the duty to collect sales tax on the lease of an Ausonic Microimager if it accepts in good faith a properly completed exemption certificate.

The Petitioner submitted the following information. With respect to issue "1", Petitioner leased a trailer and dump truck prior to June, 1990 to a certain lessee. The original cost of the trailer was \$5,780 and the dump truck \$13,500.

Sales tax was not charged on the lease payments by Petitioner to the lessee. Upon audit by the Department of Taxation and Finance, the auditor requested proof of payment of the sales tax on such vehicles. Petitioner furnished the auditor with copies of the vehicle registrations as evidence that the sales tax was collected and paid on such vehicles.

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

Section 1131 of the Tax Law states, in part, as follows:

- (1) "Persons required to collect tax" or "persons required to collect any tax imposed by this article" shall include every vendor of tangible personal property or services;...

In Leonard R. Landis, Adv Op Comm T&F, August 20, 1991, TSB-A-91(57)S, the Commissioner advised that sales tax is due on the full amount of the lease price of a motor vehicle and that the lessor/vendor is responsible for collecting such sales tax on each payment received from the lessee under the lease.

Accordingly, for leases created prior to June 1, 1990, pursuant to Sections 1105(a) and 1131(1) of the Tax Law and Leonard R. Landis, Supra sales tax is due from the lessee on the full amount of the lease price of the vehicles and Petitioner is responsible for collecting such sales tax on each payment received from the lessee under the lease. The fact that a vehicle is registered with the Department of Motor Vehicles is not sufficient evidence to determine that any applicable sales tax was paid since a vehicle may be registered under certain circumstances without the payment of sales tax by use of an exemption certificate.

It is noted that Section 1111 of the Tax Law, amended effective June 1, 1990, applies sales tax to automobile leases executed on or after such date, in part, as follows:

* * *

(i)(A) Notwithstanding any contrary provisions of this article or other law, with respect to any lease for a term of one year or more of (1) a motor vehicle, as defined in section one hundred twenty-five of the vehicle and traffic law, with a gross weight of ten thousand pounds or less,... or an option to renew such a lease or a similar contractual provision, all receipts due or consideration given or contracted to be given for such property under and for the entire period of such lease, option to renew or similar provision, or combination of them, shall be deemed to have been paid or given and shall be subject to tax, and any such tax due shall be collected, as of the date of first payment under such lease, option to renew or similar provision, or combination of them, or as of the date of registration of such property with the commissioner of motor vehicles, whichever is earlier.... (emphasis added)

With respect to issue "2", Petitioner leased an Ausonics Microimager to a Doctor of Veterinary Medicine. An Ausonics Microimager is an ultrasound machine designed for monitoring animals. The veterinarian indicated to Petitioner that he was the owner of a farm on which livestock was raised and that the device would be utilized in examination of the uterus of horses as well as for viewing the tendons of horses, a function integral in the life of cycle horses when preparing them for ultimate sale.

Receipts from the sale of farm equipment are exempt from sales tax pursuant to section 1115(a)(6) of the Tax Law.

A timely Farmer's Exemption Certificate was issued to Petitioner in which the lessee/veterinarian checked the single purchase certificate and certified that the product would be used in an exempt manner (specifically used directly and predominately in farm production).

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 or proving that the receipt...is not taxable...shall be solely upon the customer

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

Presumption of Taxability

(a) General. (1) It is presumed that all receipts for property or services of any type mentioned in subdivisions (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 and the customer.

(2) A vendor who in good faith accepts from a purchaser a properly completed exemption certificate or, as authorized by the Department, other documentation evidencing exemption from tax not later than 90 days after delivery of the property or the rendition of the service is relieved of liability for failure to collect the sales tax with respect to that transaction. The timely receipt of the certificate or documentation itself will satisfy the vendor's burden of proving the nontaxability of the transaction and relieve the vendor of responsibility for collecting tax from the customer.

(i) A certificate or other document is "accepted in good faith" when a vendor has no knowledge that the exemption certificate or other document issued by the purchaser is false or is fraudulently presented. If reasonable ordinary due care is exercised, knowledge will not be imputed to the seller required to collect the tax.

* * *

Example 3: Mr. Jones, who was not a registered sales tax vendor, purchased vinyl siding from XYZ Building and Supply company to install on a house which he owns. Upon picking up the siding, Mr. Jones improperly issued a contractor's exempt purchase certificate to the vendor, complete with an apparently valid

identification number, and did not pay the tax on the purchase price. Subsequently, the Tax Department audited XYZ's nontaxable sales and determined Mr. Jones had issued a false contractor's exempt purchase certificate. Although the certificate issued by Mr. Jones was false, XYZ Building and Supply company accepted the completed certificate in good faith as it appeared to be properly completed and XYZ had no knowledge that the certificate was false. XYZ Building and Supply company is therefore relieved of liability for failure to collect tax on this transaction.

* * *

(ii) An exemption certificate or other document is considered to be properly completed when it contains the:

- (a) date prepared;
- (b) name and address of the purchaser;
- (c) name and address of the vendor;

(d) identification number of the purchaser as shown on its certificate of authority, or exempt organization number as shown on the exempt organization certificate, if any such numbers are required by the certificate or document. The farmer's exemption certificate does not have such a number. Also, the exemption certificate for tractors, trailers or semitrailers does not require the number of the purchaser's certificate of authority in all instances. However, if the purchaser completing an exemption certificate for tractors, trailers or semitrailers does not have a certificate of authority, such exemption certificate must show the purchaser's highway use tax identification number unless the purchaser is a certificated household goods mover, in which instance it must show its Interstate Commerce Commission or New York State Department of Transportation identification number. Absent such identifying numbers, the exemption certificate for tractors, trailers or semitrailers is incomplete.

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

(f) any other information require to be completed on the particular certificate or document. (emphasis added)

In D'Agostino General Contractors, Inc., Adv Op Comm T&F, July 1, 1992, TSB-A-92(53)S, the Commissioner opined that, in the absence of fraud, the acceptance by Petitioner of a properly completed exemption certificate in good faith is sufficient to relieve the Petitioner of his duty to collect tax from his customer.

Moreover, where a vendor accepted in good faith a Certificate of Capital Improvement, it was not under a duty to investigate or police its customers and the vendor had no duty to debate with its customers as to whether the work to be performed constituted a capital improvement or a repair. (See: Saf-Tee Plumbing v. State Tax Commission, 77 AD2d 1).

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Accordingly, pursuant to Section 1132(c) of the Tax Law and Section 532.4 of the Sales and Use Tax Regulations, in the absence of fraud, the acceptance by Petitioner of a properly completed exemption certificate in good faith is sufficient to relieve Petitioner of its duty to collect sales tax from the lessee/veterinarian. D'Agostino General Contractors, Inc. and Saf-Tee Plumbing v State Tax Commission, supra.

In the instant case, the questions of whether fraud was involved or whether a properly completed exemption certificate was accepted in good faith are factual questions which cannot be determined in an Advisory Opinion. An Advisory Opinion merely sets forth the applicability of pertinent statutory and regulatory provisions to a "specified set of facts." Tax Law, Section 171, subd. twenty-fourth; 20 NYCRR 2376.1(a).

DATED: May 18, 1995

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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