

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

TSB-A-98(13)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S971229D

On December 29, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from Gerard Altieri, 35 High Ridge Road, Hartsdale, New York, 10530.

The issue raised by Petitioner, Gerard Altieri, is whether the sale of furniture manufactured in New York and delivered to Las Vegas, Nevada is subject to sales or compensating use tax.

Petitioner submits the following facts as the basis for this Advisory Opinion.

A foreign corporation places an order for the manufacture of furniture to be delivered to Las Vegas, Nevada. The foreign corporation maintains an office in New York City. The furniture is manufactured in New York in finished product form and delivered to Las Vegas, Nevada. The foreign corporation's main headquarters are located in Las Vegas, Nevada.

Applicable Law and Regulations

Section 1105(a) of the Tax Law imposes a tax on the receipts of every retail sale of tangible personal property, except as otherwise provided.

Section 525.2 (a) of the Sales and Use Tax Regulations, provides, in part:

(2) The sales tax is a "transactions tax," liability for the tax occurring at the time of the transaction. Generally speaking, the taxed transaction is an act resulting in the receipt of consideration for the transfer of title, or possession or both to property or rendition of services from one person to another. The time or method of payment is immaterial, since the tax becomes due at the time of transfer of property or rendition of service.

* * *

(3) The sales tax is a "destination tax," that is, the point of delivery or point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate.

Section 526.7(e) of the Sales and Use Tax Regulations, provides, in part:

Transfer of possession. (1) Except as otherwise provided in paragraph (3) of this subdivision, a sale is taxable at the place where the tangible personal property or service is delivered, or the point at which possession is transferred by the vendor to the purchaser or designee.

* * *

Example 2: A person, not a resident of New York State, purchases tangible personal property in New York State and has it delivered to his home out of state. The receipt from the sale is not taxable in New York State as delivery was made outside of New York.

* * *

(2) Except as otherwise provided in paragraph (3) of this subdivision, a sale of tangible personal property, in which the title to the property passes in New York State, but in which delivery occurs outside New York State, is not subject to tax.

Opinion

Since the point of delivery and the transfer of possession of the furniture occurs outside New York State and the furniture is used outside New York State, the New York firm is not required to collect or remit sales or compensating use tax on the sale. If the foreign corporation purchases the furniture and has it delivered to the company's New York location, or the foreign corporation sends its trucks or employees into New York to pick up the furniture, the purchase would be subject to sales tax under Section 1105(a) of the Tax Law, even if the furniture is subsequently shipped to Las Vegas. In those cases, the transfer of possession would have taken place within New York State. (See Bruce MacCorkindale, CPA, Adv Op, Comm T & F, August 5, 1986, TSB-A-86(48)S).

DATED: February 25, 1998

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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