

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

TSB-A-98(31)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S970715A

On July 15, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from Valerie Reilly, New York City Board of Education, Office of Financial Operations, Purchasing Management, 44-36 Vernon Blvd., Long Island City, New York 11101.

The issue raised by Petitioner, Valerie Reilly, is whether certain purchases made by school teachers are exempt from sales tax.

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

Under the Teacher's Choice Program, educators are allocated a sum of money paid by check from the New York City Board of Education (the Board of Education) to purchase materials for use in their classroom or office assignments. All participants in the program are provided with a Teacher's Choice Accountability Booklet that explains all aspects of the program and clearly defines the purchasing guidelines established for the program. Participants are fully accountable for the materials purchased with their individual allocations and must complete the Statement of Purpose section of an Accountability Form prior to receiving their checks. After purchases have been completed and brought into their schools, teachers must complete the accountability section of the form and submit it, together with purchase invoices, to the school principals. All materials are the property of the school and not of the individual teacher. Teachers must return unspent balances to the Board of Education.

Applicable Tax Law and Regulations

Section 1105(a) of the Tax Law imposes sales tax on "[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1116 of the Tax Law provides, in part,

Exempt organizations. (a) Except as otherwise provided in this section, any sale . . . to any of the following . . . or any use . . . by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

(1) The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services or property of a kind not ordinarily sold by private persons;

* * *

Section 1132(c)(1) of the Tax Law provides in part:

For the purpose of proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all receipts for property . . . of any type mentioned in subdivisions (a) . . . 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 consumer. Except as provided in subdivision (h) or (k) of this section, unless . . . the purchaser, not later than ninety days after delivery of the property . . . furnishes to the vendor: any affidavit, statement or additional evidence, documentary or otherwise, which the commissioner may require demonstrating that the purchaser is an exempt organization described in section eleven hundred sixteen, the sale shall be deemed a taxable sale at retail. Where . . . an affidavit, statement or additional evidence referred to in the previous sentence is received within the time limit set forth therein, but is deficient in some material manner, and where such deficiency is thereafter removed, the receipt of . . . such affidavit, statement or additional evidence shall be deemed to have satisfied all of the requirements of the preceding sentence. Where such . . . an affidavit, statement or additional evidence has been furnished to the vendor, the burden of proving that the receipt . . . is not taxable hereunder shall be solely upon the customer. The vendor shall not be required to collect tax from purchasers who furnish . . . such an affidavit, statement or additional evidence in proper form

Section 529.1(d)(1) of the Sales and Use Tax Regulations provides, in part:

Any person or organization claiming exemption from tax must furnish its vendor with documentation substantiating its right to the exemption claimed before it may purchase exempt from tax In addition, the billing must be made directly to the person or organization and paid for [sic.] from the funds of such person or organization, except as otherwise provided in this Title. Any transaction which is not supported by proper documentation is subject to tax at the time of purchase. See Part 532 (Collection of Tax) of this Title.

Section 529.2(b) of the Regulations provides:

As purchaser. (1) New York State, or any of its agencies, instrumentalities, public corporations or political subdivisions (hereinafter referred to as New York State governmental entities) are not subject to sales or use tax when they are the purchaser, user, or consumer of tangible personal property

(2) New York State governmental entities as purchasers, users, consumers . . . must exercise their right to exemption through the issuance of governmental purchase orders or the appropriate exemption document.

Section 532.4(b) of the regulations provides in part:

Burden of Proof. (1) The burden of proving that any receipt . . . is not taxable shall be upon the person required to collect the 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 . . . 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.

Opinion

Governmental entities that are exempt from tax under Section 1116(a)(1) of the Tax Law may use government purchase orders, affidavits and other evidence of exemption to make exempt purchases. Organizations that are exempt from tax under Section 1116(a)(4) of the Tax Law may use the Exempt Organization Certification (Form ST-119.1). Under the Teacher's Choice Program, teachers may make exempt purchases by providing vendors, within 90 days of the delivery date, with a government purchase order or other appropriate exemption document.

If a government purchase order is not available, teachers may make exempt purchases under the Teacher's Choice Program by furnishing vendors with a letter on the Board of Education's letterhead, signed by the teacher, which reads substantially as follows:

I, [name of teacher], a teacher at the [name of school], am authorized under the Teacher's Choice Program to purchase instructional materials for the Board of Education of The City of New York (the "Board of Education") up to the amount of [dollar amount of allocation under the Teacher's Choice Program], and I am purchasing these materials from [name of vendor] on behalf of the

Board of Education pursuant to this Program. This purchase is being paid for from funds made available by the Board of Education. The total of this purchase and prior allowable purchases made by me under this Program during the period from [applicable purchasing period under the Teacher's Choice Program] does not exceed the amount specified above.

I understand that any purchases I make in excess of the amount specified above, or any purchases for personal use, rather than for use as instructional materials at my school, are subject to sales tax. I understand that civil and /or criminal penalties may result from the misuse of this document.

Vendors should retain these letters to prove the exempt status of sales made under the Teacher's Choice Program, and must be able to associate the letters with particular sales invoices. See Section 533.2 of the Sales and Use Tax Regulations. Sales invoices must indicate that the purchases are being made on behalf of the Board of Education.

DATED: May 20, 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.