

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

TSB-A-99(36)S
Sales Tax
July 27, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S990629A

On June 29, 1999, the Department of Taxation and Finance received a Petition for Advisory Opinion from Direct Casket, 1215 2nd Ave., New Hyde Park, New York 11040.

The issue raised by Petitioner, Direct Casket, is whether its retail sales of caskets directly to consumers are subject to sales tax.

Petitioner is a casket retailer which sells burial caskets directly to consumers. Petitioner states that purchasing caskets from its business offers customers a lower priced alternative to purchasing caskets from funeral homes. Petitioner points out that caskets sold by funeral homes are not subject to sales tax.

Applicable Law and Regulations

Section 1101(b)(4)(i) of the Tax Law defines the term "Retail sale" in part, as:

A sale of tangible personal property to any person for any purpose, other than (A) for resale as such...

Section 1105 of the Tax Law provides, in part:

Imposition of sales tax.-On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

Section 1110 of the Tax Law provides, in part:

Imposition of compensating use tax.-(a) Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state on and after June first, nineteen hundred seventy-one, except as otherwise exempted under this article, (A) of any tangible personal property purchased at retail,...

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Section 1115(a) of the Tax Law provides, in part:

Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(7) Tangible personal property sold by a mortician, undertaker or funeral director. However, all tangible personal property sold to a mortician, undertaker or funeral director for use in the conducting of funerals shall not be deemed a sale for resale within the meaning of paragraph (4) of subdivision (b) of section eleven hundred one of this chapter and shall not be exempt from the retail sales tax.

Section 528.8(a) of the Sales and Use Tax Regulations provides:

Exemption. Tangible personal property sold or rented by a mortician, undertaker or funeral director (hereinafter referred to as funeral directors) in the performance of his professional services is not subject to the sales or compensating use tax.

Opinion

Section 1115(a)(7) of the Tax Law provides an exemption from sales and use tax for sales of tangible personal property by a mortician, undertaker or funeral director. These businesses, on the other hand, may not purchase tangible personal property exempt from sales tax as purchases for resale. Petitioner is a retail seller of caskets; it is not a mortician, undertaker or funeral home. Petitioner's sales of caskets to consumers are therefore subject to sales and compensating use tax. However, when Petitioner purchases caskets for sale to its customers such purchases are considered for resale. Therefore, such purchases are not subject to sales and compensating use tax. Petitioner should present a properly completed resale certificate (Form ST-120) to the seller of the caskets within 90 days of the date of delivery. See Section 1132(c) of the Tax Law.

DATED: July 27, 1999

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

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