

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

TSB-H-80 (257) S
Sales Tax
December 26, 1980

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800925B

On September 25, 1980, a Petition for Advisory Opinion was received from Banner Metals Division of Intercole Automation, Inc., P.O. Box 431, West Main Street, Stroudsburg, Pennsylvania 18360.

The issue raised is whether sales tax is due on the receipts from a sale of tangible personal property to a business located outside New York where the property sold is shipped by the seller directly to a customer of the purchaser's located in New York.

Petitioner, a company located in the State of Pennsylvania and registered to collect New York State sales tax, sold tangible personal property to a customer located in the State of New Jersey and, at the customer's request, shipped the tangible personal property by common carrier to a destination in Nassau County, New York. Petitioner invoiced its New Jersey customer for the material and, in the absence of a tax exemption certificate, added applicable sales tax to the invoice. Petitioner's customer did not pay the tax.

Section 1105(a) of the Tax Law imposes a tax upon "The receipts from every retail sale of tangible personal property..."

The Sales and Use tax Regulations provide, in relevant part, as follows:

"Transfer of possession. (1) 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 his designee.

...

Example 3: A New York State vendor ships tangible personal property not for resale, to its customer in New York F.O.B. Chicago, Illinois. Delivery occurs in New York. The receipt from the sale is taxable.

...

Example 5: A New Jersey resident purchases woolens from a New York State supplier and requests that the woolens be shipped to a New York State dressmaker to produce wearing apparel not intended for resale. The dressmaker will ship the completed apparel to New Jersey. Since the delivery of the woolens occurred in New York State the woolens are subject to tax. However, the charge for producing the wearing apparel is not subject to tax because delivery of the wearing apparel takes place in New Jersey.

(2) A sale of tangible personal property, in which the title to the property passes in New York, but in which delivery occurs outside of New York, is not subject to tax". 20 NYCRR 526.7(e).

Section 1132(c) of the Tax Law provides, in relevant part, that "...it shall be presumed that all receipts for property or services of any type mentioned in [section 1105(a) of the Tax Law]. . .are subject to tax until the contrary is established....Unless...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 resale or for some use by reason of which the sale is exempt from tax...[or to the effect that] the purchaser is an exempt organization...the sale shall be deemed a taxable sale at retail.

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Accordingly, inasmuch as Petitioner has made a sale of tangible personal property delivered in Nassau County, New York, and inasmuch as the purchaser has not tendered to the seller a certificate described in section 1132(c) of the Tax Law, State sales tax imposed under Article 28 of the Tax Law and local sales tax imposed under the authority of Article 29 of the Tax Law are due on the receipts arising from the sale.

DATED: December 10, 1980

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau