

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-02(54)S
Sales Tax
November 6, 2002

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S020403A

On April 3, 2002, the Department of Taxation and Finance received a Petition for Advisory Opinion from the City of Fulton, 141 South First Street, Fulton, New York, 13069.

The issue raised by Petitioner, City of Fulton, is how a retail business collects and reports sales tax when its premises are split by a jurisdictional boundary.

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

A retail vendor of gasoline (motor fuel) wishes to expand its business premises. As a result of this physical expansion, the Fulton City line will run through the business's gasoline pumps.

Applicable Law and Regulations

Section 1105 of the Tax Law provides, in part:

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 1213 of the Tax Law provides, in part:

Deliveries outside the jurisdiction where sale is made

Where a sale of tangible personal property or services . . . is made in any city, county or school district, but the property sold . . . is or will be delivered to the purchaser elsewhere, such sale shall not be subject to tax by such city, county or school district. However, if delivery occurs or will occur in a city, county or school district imposing a tax on the sale or use of such property . . . the vendor shall be required to collect from the purchaser, as provided in section twelve hundred fifty-four, the aggregate sales or compensating use taxes imposed by the city, if any, county and school district in which delivery occurs or will occur, for distribution by the commissioner to such taxing jurisdiction or jurisdictions. For the purposes of

this section delivery shall be deemed to include transfer of possession to the purchaser and the receiving of the property . . . by the purchaser.

Section 525.2(a)(3) of the Sales and Use Tax Regulations provides:

Except as specifically provided otherwise, the sales tax is a "destination tax." The point of delivery or point at which possession is transferred by the vendor to the purchaser, or the purchaser's designee, controls both the tax incidence 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 his designee.

* * *

(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 of New York State, is not subject to tax.

Section 533.2 of the Sales and Use Tax Regulations provides, in part:

(a) General.

(1) For the proper administration of the Sales and Use Tax Law and to prevent evasion of the sales tax, it is statutorily presumed that all receipts from sales and purchases of property or services of any type mentioned in subdivisions (a) through (d) of section 1105 of the Tax Law . . . are subject to the tax until the contrary is established. The burden of proving that any receipt . . . is not taxable is on the vendor or the customer. To satisfy his burden of proof, a vendor must maintain records sufficient to verify all transactions.

* * *

(b) Sales records.

* * *

(3) The seller must maintain records which substantiate points of delivery if delivery was made at a place other than his place of business. . . . Such documents must be referenced to specific sales transactions.

Opinion

The premises of a retail service station straddles the boundary of two taxing jurisdictions; Oswego County outside the City of Fulton (Petitioner) and Petitioner. Some of the service station's gas pumps will be located inside Petitioner's city limits and some will be located within Oswego County but outside Petitioner's city limits. Petitioner is located wholly within Oswego County. Petitioner asks how the retail business collects and reports sales tax when its premises are split by a jurisdictional boundary. Petitioner implicitly raises the issue of what the record keeping requirements are for the business.

If delivery of taxable property occurs in a city or county imposing a tax on the sale of such property, as in Petitioner's case, the vendor is required to collect from the purchaser the aggregate sales or compensating use taxes imposed in the jurisdiction in which delivery of the property occurs, for distribution by the Commissioner of Taxation and Finance to such taxing jurisdiction or jurisdictions. See Section 1213 of the Tax Law.

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. In the instant case, delivery of the property (motor fuel) occurs at the pump. Even if title to the property is transferred at a location other than the pump, the point at which possession is transferred takes precedence. Section 526.7(e)(2) of the Sales and Use Tax Regulations offers some guidance in this area.

A vendor making sales in more than one taxing jurisdiction is obligated to keep records showing the point of delivery of each sale. See Section 533.2 of the Sales and Use Tax Regulations.

Accordingly, the retail vendor of motor fuel described above whose premises straddle Petitioner's city limits, when filing its periodic sales and use tax return is required to report its taxable sales of motor fuel on Schedule FR (Form ST-100.10) on the line for the taxing jurisdiction in which the fuel is delivered to the customer. Where the fuel is delivered to the customer at a location within the County of Oswego but outside Petitioner's city limits, the amount of the sale must be reported on the line for Oswego County. Where the fuel is delivered to the customer at a location inside Petitioner's city limits, the amount of the sale must be reported on the line for Fulton (city). See Part 3 of the instructions for completing Schedule FR. The retail vendor is required to maintain records which substantiate the amounts reported. Receipts given to customers should

TSB-A-02(54)S
Sales Tax
November 6, 2002

identify the taxing jurisdiction in which the tax was collected to allow for the proper distribution of refunds of tax where applicable.

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