

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

TSB-A-03(8)S
Sales Tax
March 4, 2003

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S020702A

On July 2, 2002, the Department of Taxation and Finance received a Petition for Advisory Opinion from Herrick, Feinstein LLP, 2 Park Avenue, 20th Floor, New York, NY 10016.

The issue raised by Petitioner, Herrick, Feinstein LLP, is whether the sales tax is imposed with respect to an installment sale of art, (a) on the entire amount of the contract at the time of the first installment payment, or (b) on the amount of each payment at the time received by the seller of the art.

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

Petitioner's client has entered into an agreement ("Agreement") by which it may ultimately acquire two works of art (the "Art"), provided a series of partial payments are made over a period of approximately eighteen months. The Agreement is between Petitioner's client and the seller of the Art ("Seller"), who is engaged in the business of the purchase and sale of art. The purchase price of the Art is approximately \$5X (an amount in excess of \$5,000,000), with Petitioner's client paying Seller \$1.25X on or around the middle of 2002, at which time the client was given possession of the Art in New York City subject to the completion of payments. Subsequently, additional payments were required to be made by Petitioner's client to Seller as follows: \$1.25X in November, 2002, \$1.25X in May, 2003, and the final \$1.25X in November, 2003.

Section 6B of the Agreement provides; "Anything in this agreement notwithstanding, the Buyer agrees that title to the Art shall not pass to the Buyer until payment of the Purchase Price has been made in full to the Seller."

Applicable Law and Regulations

Section 1101(b)(3) of the Tax Law defines the term receipt, in part, to mean:

The amount of the sale price of any property and the charge for any service taxable under this article. . . .

Section 1105 of the Tax Law imposes sales tax, in part, upon:

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

Section 1132 of the Tax Law provides, in part:

(a)(1) Every person required to collect the tax shall collect the tax from the customer when collecting the price, amusement charge or rent to which it applies. . . .

* * *

(d) The tax commission may provide by regulation that the tax upon receipts from sales on the installment plan may be paid on the amount of each installment and upon the date when such installment is due.

Section 525.2(a)(2) of the Sales and Use Tax Regulations provides, in part:

Except as specifically provided otherwise, the sales tax is a "transactions tax," with the liability for the tax occurring at the time of the transaction. Generally, a taxed transaction is an act resulting in the receipt of consideration for the transfer of title to or possession of (or both) tangible personal property or for the rendition of an enumerated service. The time or method of payment is generally immaterial, since the tax becomes due at the time of transfer of title to or possession of (or both) the property or the rendition of such service (Emphasis added)

Section 532.1(a) provides, in part:

Time of collection. (1) Every person required to collect the tax shall collect the tax from the customer when collecting the price, amusement charge or rent to which it applies.

(2) Where a vendor makes a sale for which payment is not received at the time of delivery, such sale must be reported on the return covering the period in which the sale is made. Thus, if the sale is a taxable sale, the full amount of tax must be remitted with the return whether or not any money was collected at the time of sale.

Opinion

Petitioner's client has entered into an agreement with Seller to purchase two works of art (the "Art"). The sale of art work is subject to sales tax as a retail sale of tangible personal property. Seller will transfer possession of the Art upon receipt of the first of several payments. Seller's agreement to accept payment over a period of time is immaterial with regard to the collection and remittance of the tax. The liability for the tax occurs upon the transfer of title to or possession of the Art, and the tax is imposed on the full contract price at that time. See Section 525.2(a) of the Sales and Use Tax Regulations. Although Seller allows its customer to pay the total price on an installment basis, there has been only one transaction, not several individual transactions. It should be noted that the Sales and Use Tax Regulations make no provision for the tax to be paid on a periodic basis with respect to installment sales.

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Accordingly, Seller is required to collect and remit the State and local sales taxes imposed on the total contract price when Petitioner's client takes possession of the Art. See Section 532.1(a) of the Sales and Use Tax Regulations.

DATED: March 4, 2003

/s/
Jonathan Pessen
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Technical Services Division

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