

**New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit**

TSB-A-11(23)S
Sales Tax
August 19, 2011

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S110503B

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether the New York State and local sales taxes, collected and reported by a vendor from whom Petitioner purchases taxable personal property, should be based on the rates in effect in the sales tax jurisdiction where the property is delivered to Petitioner.

We conclude that the sales taxes required to be collected by the vendor are the combined State and local rates in effect where the common carrier delivers the property.

Facts

Petitioner is a marina located in New York State and purchases parts to repair its forklift from a vendor that is located in a different sales tax jurisdiction within New York State. Petitioner concedes that these parts are subject to State and local sales and compensating use taxes. The vendor ships the property to Petitioner by UPS (United Parcel Service), FedEx (Federal Express), or the US Postal Service. The vendor claims that possession of the property is transferred to Petitioner when the property is turned over to the common carrier for shipping, and thus the sale is subject to the sales taxes applicable in the vendor's tax jurisdiction. Petitioner disagrees and believes that the applicable rate is the combined State and local rates in effect where Petitioner takes delivery of the property.

Analysis

Because the State sales tax rates are the same in both Petitioner's and the vendor's tax jurisdictions, the crux of the issue is the difference in the local tax rates. Section 1213 of the Tax Law directs a vendor to collect the city, county, or school district sales or compensating use taxes based on the rate imposed in the taxing jurisdiction in which the delivery occurs.¹

Where a sale of tangible personal property...is made in any city, county or school district, but the property sold...will be delivered to the purchaser elsewhere, such sale shall not be subject to tax by such city, county or school district. [T]he vendor shall be required to collect from the purchaser...the aggregate sales or compensating use taxes imposed by the city, if any, county and school district in which delivery occurs.... For purposes of this section delivery shall be deemed to

¹ The additional State sales and use tax imposed by Section 1109 of the Tax Law would also apply to deliveries made within the Metropolitan Commuter Transportation District.

include transfer of possession to the purchaser and the receiving of the property
...by the purchaser.

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 controls both the tax incidence and the tax rate.² Regardless of the contract terms of sale (e.g., FOB, FAS., etc.), for purposes of the incidence of the sales tax, delivery by common carrier is deemed to be delivery by the seller. (*See* TSB-A-08(53)S.) Therefore, the Petitioner is correct in that the vendor must collect and remit sales tax based on the combined State and local sales tax rate in effect in the taxing jurisdiction where Petitioner takes delivery of the property from the common carrier.

To the extent that the vendor fails to collect the correct rate of tax, the Petitioner remains liable for the full amount of tax owed. Petitioner must report this additional tax along with its own sales and use tax return.

DATED: August 19, 2011

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.

² 20 NYCRR §525.2(a)(3)