

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

TSB-A-81(9)S  
Sales Tax  
August 13, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810416A

On April 16, 1981 a Petition for Advisory Opinion was received from Green Bros. Home and Garden, Inc., 5500 Merrick Road, Massapequa, New York 11758.

Petitioner inquires as to the rate of sales tax to be applied to sales of kerosene sold for use in home heating.

Petitioner, a vendor located in Nassau County, sells kerosene for home heating use to consumers who bring containers to his place of business to be filled. Petitioner notes that the containers are of various sizes, but never less than one gallon.

Section 1105(a) of the Tax Law imposes the State's 4% sales tax on receipts from retail sales of tangible personal property. Nassau County imposes a similar tax, at a rate of 3%. These impositions of tax are by their terms applicable to the sale of kerosene. However, Section 1105-A of the Tax Law, enacted in 1978, provided for a reduction of the State's tax rate on certain energy sources, including kerosene, used for residential purposes. Since October 1, 1980 such rate has been 0%. Nassau County has also provided for a rate reduction with respect to the same transactions. The County tax rate was reduced to 2% as of January 1, 1980 and further reduced to 1% as of June 1, 1981. Pursuant to Section 1105-A(e) of the Tax Law the State Tax Commission has prescribed a Certification of Residential Use, Sales Tax Reduction on Energy Purchases (Form TP-385) which must be received, in properly completed form, by a vendor from a purchaser, in order for the reduced tax rates to apply to a transaction.

Accordingly, Petitioner need collect only the Nassau County tax on sales of kerosene for residential use (at a rate of 1%, at present), where a properly completed Form TP-385 has been supplied by the purchaser. Where such document has not been so supplied Petitioner must collect both State and Nassau County sales tax, at a combined rate of 7%. It is to be noted that the amounts sold have no bearing on the applicable tax rates.

DATED: July 29, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau