

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

TSB-A-82(25)S
Sales Tax
August 5, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810625A

On June 25, 1981, a Petition for Advisory Opinion was filed by P. Hackett Hardware Company, Inc., 1230 Congress Street, Ogdensburg, New York 13669.

Petitioner raises two issues related to the operation of a hardware store which makes sales to farmers. Petitioner inquires, first, as to how it may determine whether tax is due on specific sales to farmers. Second, Petitioner inquires as to whether it is required to keep written itemized invoices for each exempt sale.

I

Section 1105(a) of the Tax Law imposes the State sales tax on receipts from retail sales of tangible personal property. Section 1115(a)(6) of the Tax Law provides for an exemption from such tax with respect to property used in farming, limited to the following:

(6) Tangible personal property, except property incorporated in a building or structure but not including posts and wire which are used to make and maintain a trellis for grapes, for use or consumption directly and predominantly in the production for sale of tangible personal property by farming, including stock, dairy, poultry, fruit, fur bearing animal, graping and truck farming. The term farming shall also include ranching, operating nurseries, greenhouses, vineyard trellises or other similar structures used primarily for the raising of agricultural, horticultural, vinicultural, viticultural or floricultural commodities, and operating orchards. In addition, tangible personal property for use in erecting, adding to, altering or improving a silo used in farming to make and store silage on a farm, provided such tangible personal property is to become an integral component part of such silo.

Accordingly, the receipts from sales of such tangible personal property are not subject to tax. However, in order for Petitioner's customers to avail themselves of the benefit of this exemption provision at the time of purchase, there are certain procedural requirements which must be met, as hereinafter set forth.

Section 1132(c) of the Tax Law provides, in pertinent part, that all receipts from retail sales of tangible personal property are deemed to be subject to tax, unless the purchaser provides the vendor with a properly completed certificate, in such form as the Tax Commission may prescribe, indicating that the property was purchased for "some use by reason of which the sale is exempt from

tax." The meaning of such provision is elucidated in the Sales and Use Tax Regulations, as follows:

Reg. Sec. 532.4 Presumption of Taxability. . .

(a) General. It shall be presumed that all receipts from sales of property . . . of any type mentioned in subdivision (a). . . of section 1105 of the Tax Law [viz., sales of tangible personal property] are subject to tax until the contrary is established.

(b) Burden of proof. (1) The burden of proving that any receipt . . . is not taxable shall be upon the person required to collect tax or the customer.

(2) When the vendor makes a sale which is exempt because the property purchased is for . . .an exempt use . . ., as proof of the exemption the vendor shall, at the time of sale, obtain a properly completed exemption certificate from the purchaser and retain the certificate in his files. Such certificate satisfies the vendor's burden of proof.

(3) When the vendor is furnished with a properly completed exemption certificate, the burden of proving a transaction is not taxable shall be solely upon the customer.

(4) The vendor shall not be relieved of the burden of proof when no exemption certificate or an improper certificate has been furnished him, or when the vendor has actual knowledge that a certificate furnished is false or fraudulent. 20 NYCRR 532.4.

In the present instance the applicable exemption certificate would be the Farmer's Exemption Certificate (Form ST-125), whose use is prescribed in section 528.7(c) of the Sales & Use Tax Regulations. Thus, Petitioner may make sales without the collection of sales tax upon receipt of a properly completed Farmer's Exemption Certificate, except where Petitioner "has actual knowledge that a certificate furnished is false or fraudulent." Such actual knowledge will be presumed to exist where a vendor accepts a Farmer's Exemption Certificate with respect to the sale of any of the items listed on the reverse of such certificate as taxable without regard to use or method of installation. For example, the sale of a power drill would be presumed to be made with actual knowledge that the certificate is not applicable thereto, while such presumption would not arise with respect to the sale of ice, which would be exempt when purchased for use in preserving products still in production but taxable when purchased for use in preserving products which are finished and ready for sale.

Petitioner inquires, in addition, as to the taxability of the receipts from sales of a number of specific items, as follows:

1. Chain saws used for cutting fence posts. These are taxable inasmuch as they are not used "directly" in farm production. 20 NYCRR 528.7(d)(1).

2. Garden tools, (rakes, shovels, hoses, etc.) and garden tractors. These are exempt only if used in the production for sale of tangible personal property by farming. Petitioner may rely on a Farmer's Exemption Certificate.

3. Plumbing and paint for barns. These items are explicitly excluded from the exemption provision contained in section 1115(a)(6) of the Tax Law, as "property incorporated in a building or structure."

4. The service of repairing equipment. The Tax Law contains no provision presently exempting the receipts from such service. See 20 NYCRR 528.7(a)(4). However, section 1105(c)(3)(vi) of the Tax Law does provide for such an exemption, effective September 1, 1982, applicable to the services of maintaining, servicing or repairing tangible personal property purchased for use or consumption directly and predominantly in the production for sale of tangible personal property by farming.

II

Petitioner's second major inquiry is as to whether it is required to maintain in its records a written itemized invoice for each exempt sale, and whether check-out terminal printed totals would constitute adequate records, in the place of such invoices, for purposes of the Tax Law.

Section 1135 of the Tax Law, which sets forth the record-keeping requirements applicable to vendors under the sales tax, provides, in relevant part, as follows:

Every person required to collect tax shall keep records of every sale and of all amounts paid, charged or due thereon and of the tax payable thereon, in such form as the tax commission may by regulation require. Such records shall include a true copy of each sales slip, invoice, receipt, statement or memorandum [where such are given to the customer]

The Sales and Use Tax Regulations provide, in accordance with the foregoing, that "it is the responsibility of every vendor who sells both taxable and non-taxable items to maintain accurate records indicating such sales." 20 NYCRR 532.1(b). These requirements are further elucidated in Technical Services Bureau Memorandum TSB-M-81(9)S, which provides, in relevant part, as follows:

All persons who make sales which require the collection of tax . . . and those persons who . . . make sales . . . exempt from tax, shall keep records of every transaction; the amounts paid, charged, or due thereon; and the tax payable thereon. These records should include exemption documents necessary to support a claim for exemption on any sale . . . made without payment of tax, and must also contain an exact copy of each of the following:

1. sales slip, invoice, receipt, contract, statement, or other memorandum of sale;

. . . .

3. cash register tape and any other original sales document. Where no written document is given to the customer, the seller must keep a daily record of all cash and credit sales in a daybook or similar book.

. . .

The sales record must provide sufficient detail to independently determine the taxable status of each sale and the amount of tax due and collected thereon.

1. Cash register tapes which identify the individual item(s) sold, the selling price and the tax due (if any) are sufficient to independently determine the taxable status of each sale and the amount of tax due and charged thereon.

2. Cash register tapes which indicate whether each sale is in a taxable or exempt category, but which do not identify the individual item(s) sold, are sufficient to prove gross sales but are not sufficient to independently determine the taxable status of each sale.

. . .

Since the burden of proving that a sale . . . is not taxable falls upon the vendor, an exemption document from the customer is necessary to relieve the vendor of his liability for not collecting the sales tax.

Exemption certificate must be dated and retained in order to prove exempt sales. Once a properly completed certificate is obtained, it relieves the seller of liability to collect the tax on transactions to which the certificate applies. Each vendor accepting an exemption certificate must, for verification purposes, maintain a method of associating a sale made for which exemption is claimed with the certificate on file. Where a properly completed certificate is given to a vendor, the burden of proving the taxability of the sale . . . shall be solely on the customer.

Accordingly, Petitioner's check-out terminal printed totals do not, by themselves, constitute adequate records for purposes of section 1135 of the Tax Law. These totals indicate the total daily volume of sales of each department of the store, as well as totals of taxable and non-taxable sales for the entire store, but do not yield information from which the tax status of each sale can be

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determined. Petitioner's records must indicate the identity of the items sold, and the amount of tax due and collected thereon. Exemption certificates should be associated with such records, in the manner described above.

DATED: July 20, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau