

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

TSB-A-85 (35) S
Sales Tax
August 21, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S841018A

On October 18, 1984 a Petition for Advisory Opinion was received from Bartlett Systems, Inc., 470 Mamaroneck Avenue, White Plains, New York 10605.

The issue raised is whether a certain customer of Petitioner is required to furnish Petitioner with a tax exemption certificate on a form issued by the State Tax Commission.

Petitioner states that its customer has failed to issue a properly completed exemption certificate to evidence its exempt purchases. The customer asserts that its submittal of its purchase order with the notation that the transaction is tax exempt (e.g. resale, use in research and development, use in production) is ample proof of exemption.

Section 1132(c) of the Tax Law states, in part:

"For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all receipts for property or services of any type mentioned in subdivisions (a), (b), (c) and (d) of section eleven hundred five..... are subject to tax until the contrary is established, and the burden of proving that any receipt..... is not taxable hereunder shall be upon the person required to collect tax or the customer. Unless (1) a vendor shall have taken from the purchaser a certificate in such form as the tax commission may prescribe, signed by the purchaser and setting forth his name and address and . . . the number of his registration certificate, together with such other information as said commission may require, to the effect that the property or service was purchased for resale or for some use by reason of which the sale is exempt from tax under the provisions of section eleven hundred fifteen, the sale shall be deemed a taxable sale at retail." (Emphasis added.)

The forms prescribed by the State Tax Commission to be used in evidencing the exemptions for resale and exempt use are described in regulation section 532.4(d) and (e) respectively.

Petitioner's customer's purchase order does not constitute an exemption certificate within the meaning of the Tax Law 51132(c) or regulation section 532.4.

While the absence of a properly completed exemption certificate will not, in and of itself, alter the status of an otherwise exempt transaction, [see Matter of Ruemil Contract Interiors, Inc., State Tax Commission, TSB-H-83(197)SI, the absence of such certificate may impair the vendor's ability to sustain its heavy burden of proof that a particular transaction is not subject to tax. See Matter of Savemart, Inc., v State Tax Commission, 105 AD 2d 1001.

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By following the procedures regarding the use of exemption certificates set forth in regulation section 532.4, Petitioner's customer may establish the precise sales tax status of a transaction. This is accomplished through the simple expedient of properly executing the appropriate exemption certificate. Only the form prescribed by the Tax Commission may be used for this purpose.

Accordingly, a vendor should collect tax from a purchaser who does not furnish it with a properly completed exemption certificate. Tee Bar Corporation, State Tax Commission Advisory Opinion, TSB-A-81(8)S; Mohawk Dental Supply Company, Inc., State Tax Commission Advisory Opinion, TSB-A-81(33)S. if-a vendor fails to collect tax in the absence of a properly completed exemption certificate, it subjects itself to the risk of liability for the amount of uncollected tax if it is subsequently unable to establish qualification for exemption.

DATED: July 30, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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