

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

TSB-A-85 (3)S
Sales Tax
April 15, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S831003A

On October 3, 1983, a Petition for Advisory Opinion was received from Western New York Beverage Industry Collection and Sorting, 2440 Harlem Road, Cheektowaga, New York 14225.

The issues raised are whether Petitioner's services of (1) transporting non-refillable beverage containers from various dealers' places of business to Petitioner's plant, (2) processing such containers into re-usable materials for resale, and (3) providing accounting information regarding such activities are subject to State and local sales tax where such services are performed in relation to the New York State Returnable Container Act. At issue also, is whether the subsequent sale of the processed materials (containers) is subject to State or local sales tax.

Petitioner is in the business of collecting, transporting and processing empty non-refillable beverage containers.

Petitioner has entered or will enter into agreements with distributors and dealers for the transportation and processing of containers.

Under such agreements with distributors, Petitioner will pick up bags and boxes of containers on a periodic basis from dealers designated by the distributors; transport the containers to Petitioner's processing facility for sorting and counting; maintain records of all containers collected, sorted and processed; and process the containers.

Petitioner, through its accounting procedure, will determine the volume of containers for each distributor and the amount such distributor must reimburse each dealer for the refund value plus 1.5¢ per container as provided for by the "Bottle Law".

Petitioner will sell the processed containers to primary users of aluminum, glass and plastic, while the steel will be sold for scrap value. The sales of the processed containers will be made on behalf of each appropriate distributor.

Petitioner will receive payment from each distributor for each container picked up on behalf of such distributor. Petitioner will also receive payment from each distributor based on the weight of the total containers processed on behalf of such distributor. Petitioner's charge to each distributor for these services will be deducted from the sums received for the processed materials sold on behalf of such distributor.

Under agreements with dealers, Petitioner will pick up bags and boxes of containers on a periodic basis from each dealer's facilities; transport the containers to Petitioner's processing facility for sorting and counting; maintain records of all containers collected, sorted and processed; and invoice the appropriate distributor(s) on behalf of each dealer for containers picked up at such dealers' facilities.

Petitioner will charge the dealer a fee based on each container which it picks up.

The New York State Returnable Container Act requires that a distributor pay to a dealer or a redemption center the refund value of 5¢ for each beverage container accepted by the distributor from such dealer as well as an additional reimbursement of 1.5¢ for each beverage container accepted by the distributor from such dealer. As the refund of 5¢ and the reimbursement of 1.5¢ are not receipts from the sale of tangible personal property nor receipts from the sale of a taxable service, they are not subject to New York State or local sales tax.

The fee charged by petitioner to dealers, irrespective of how calculated, is considered a fee for transporting the containers to the distributor and for performing the record keeping function for dealers with respect to the deposit reimbursement and handling fee provisions of the New York State Returnable Container Act.

Section 1105(c) of the New York State Sales and Use Tax Law imposes a tax on specifically enumerated services. Record keeping or bookkeeping services and transportation services are not specifically taxed under section 1105(c) of the New York State Sales and Use Tax Law and, therefore, Petitioner's fees to dealers are not subject to a sales or use tax.

Section 1105(c)(2) of the Tax Law imposes a tax on the receipts from services of processing tangible personal property, performed for a person who directly or indirectly furnishes the property. However, the service of processing tangible personal property is not taxable when the tangible personal property is intended to be resold. 20 NYCRR 527.4(f)(1). Accordingly, Petitioner's charges to the distributors for picking up the beverage containers and transporting them to Petitioner's processing location and the additional charge based on the weight of the containers processed are all considered to be processing charges which are not subject to tax as provided under section 1105(c)(2) of the Tax Law.

Under agreements with distributors, Petitioner will maintain records of all containers collected, sorted and processed. Petitioner will determine the volume of containers for each distributor and the amount such distributor must reimburse each dealer for the refund value (5¢) plus 1.5¢ per container as provided by the New York State Returnable Container Act. Petitioner will invoice the appropriate distributor(s) on behalf of each dealer for containers picked up at such dealer's facilities. As accounting services and transportation services are not among the services taxed under section 1105(c) of the Tax Law, Petitioner's charges to the distributors for such services are not subject to State or local sales tax.

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Section 1101(b)(4) of the Tax Law defines a retail sale as a sale of tangible personal property to any person, other than for resale as such or as a physical component part of tangible personal property. As Petitioner sells the processed containers to customers who will resell the materials, such sales are not considered to be retail sales and will be exempt from State and local sales tax provided the customers provide Petitioner a properly completed Resale Certificate (Form ST-120). 20 NYCRR 526.6(c)(2).

DATED: April 15, 1985

FRANK J. PUCCIA
Director
Technical Services Bureau

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