

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

TSB-A-85(43)S
Sales Tax
September 9, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S850321A

On March 21, 1985 a Petition for Advisory Opinion was received from Heavy Duty Truck Parts, Inc., 1177 Brighton Henrietta Townline Road, Rochester, N.Y. 14623.

The issue raised is whether Petitioner is entitled to a refund of or credit for sales tax charged to customers and remitted to the Tax Department at the time of the sale, when subsequent repossession of the property results in a bad debt loss to Petitioner.

Petitioner sells personal property (trucks, etc.). Some of its customers obtain their purchase money from a finance company, and in that event Petitioner may become the guarantor of the customer's obligation to the financing organization. If the customer defaults in the loan payments to the third party, repayment of the remaining debt devolves upon the Petitioner, who then has the right to repossess the collateral. Ultimately, if Petitioner's obligation to the finance company exceeds its proceeds from the recovered property, it may have realized less than the original sales price for the property.

The New York State Tax Commission is authorized by statute to provide, by regulation, for the exclusion from taxable receipts of amounts representing sales where the contract of sale has been cancelled, the property returned or the receipt has been ascertained to be uncollectible or, in case the sales tax has been paid upon such receipt, for refund of or credit for the tax so paid. (Tax Law 1132[e]).

The pertinent Sales and Use Tax Regulations Section provides that "where a receipt. . . has been ascertained to be uncollectible, either in whole or in part, a vendor of tangible personal property. . . may apply for a refund or credit of the tax paid on such receipt. . . . This section shall not be applicable to a transaction which has been financed by a third party or where the debt has been assigned to a third party." (20 NYCRR 525.5[c][1], repealed, filed Nov. 19, 1984 eff. Nov. 19, 1984; 534.7[b][1], [3], filed Nov. 19, 1984 eff. Nov. 19, 1984).

Section 1132(a) of the Tax Law requires the vendor to collect the sales tax when collecting the purchase price. Section 1137 of the Tax Law provides that the total sales tax due must be paid when the sales tax return for the current period is timely filed. Regulations Section 525.2(a)(2) states that the tax becomes due at the time of the transfer of property, and that the time or method of payment is immaterial.

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Accordingly, Petitioner was required to collect and remit the sales tax at the time of the sale. The sale was completed when the customer took delivery of the property and paid the invoice amount. Therefore, the return of the property under the circumstances described in the petition does not qualify as a cancelled sale. Matter of Maurice S. Englander, Decision of the State Tax Commission, April 10, 1981, TSB-H-81(96)S. The repossession of property under the terms of a security agreement constitutes in itself a sale within the meaning and intent of Section 1101(b)(5) of the Tax Law, and the consideration paid for a transfer of property under such conditions is the unpaid balance of the principal and interest under the mortgage, plus the additional compensation (if any), paid by the mortgagee for the transfer. See Matter of Denos Vourderis, Decision of the State Tax Commission, August 25, 1978, TSB-H-78(54)S.

Furthermore, in accordance with Sales and Use Tax Regulations Section 525.5(c)(1), quoted above, a bad debt loss sustained by Petitioner in discharging its obligation as a co-debtor, even if the end result were an uncollectible account, does not entitle Petitioner to a refund of or credit for the sales tax charged to its customer and due to the Tax Department at the time of the sale.

DATED: August 22, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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