

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

TSB-A-88(38)S
Sales Tax
July 20, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S880225A

On February 25, 1988, a Petition for Advisory Opinion was received from C.R. Daniels, Inc., 3451 Ellicott Center Drive, Ellicott City, MD 21043.

The issue raised is whether Petitioner is subject to sales tax when selling to a purchaser outside of New York State, yet shipping the goods directly to the designee of the purchaser within New York State.

Petitioner is a Maryland corporation registered as a sales tax vendor in New York who sells to a purchaser located in Pennsylvania. Petitioner's Pennsylvania purchaser has a customer in Rochester, New York. The Pennsylvania purchaser requests that Petitioner ship the goods purchased by the Pennsylvania purchaser directly to the Pennsylvania purchaser's designee in Rochester, New York. Petitioner has requested a New York State exemption document from the Pennsylvania purchaser, yet did not receive one.

Section 1105(a) of the Tax Law imposes a tax on "[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article".

Section 525.2(a)(3) of the sales tax regulation states:

The sales tax is a 'destination tax,' that is, the point of delivery or the point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate. 20 NYCRR 525.2(a)(3).

Additionally, section 1132(c) of the Tax Law provides, in part:

(c) 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 a 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 a vendor, not later than ninety days after delivery of the property. . . shall have taken from the purchaser a certificate in such form as the tax commission may prescribe . . . to the effect that the property . . . was purchased for resale or for some other use by reason of which the sale is exempt from tax, the sale shall be deemed a taxable sale at retail.

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A taxable sale occurs when delivery is made to an address within New York State regardless of the state of residence of the purchaser. Conversely, when delivery is made to an address outside of New York State, the sale is deemed to take place at such point of delivery and no New York sales tax would be imposed regardless of the state of residence of the purchaser.

Accordingly, when Petitioner ships to a New York address, it is required to collect both the New York State sales tax and any local sales tax that may be in effect in the locality to which it delivers unless Petitioner obtains from its purchaser a properly completed exemption document as described in section 1132(c) of the Tax Law.

Moreover, the result would be the same if the transfer is f.o.b. Maryland since delivery would still take place within New York State.

DATED: July 20, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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