

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether a retailer of vaping products in New York State is required to obtain a certificate of registration as a retail dealer of tobacco products for New York State excise tax purposes.

We conclude that Petitioner is not required to obtain a certificate of registration as a retail dealer of tobacco products. However, as of December 1, 2019, Petitioner is required under Article 28- C of the Tax Law to obtain a vapor products dealer certificate of registration.

Facts

Petitioner states that it sells personal vaping products and no tobacco products. Petitioner does not specify what personal vaping products it sells. However, the business’s website indicates that Petitioner sells an assortment of vaping products such as electronic cigarettes or vape pens and liquid for use in electronic cigarettes. Petitioner does not sell cigarettes or tobacco products.

Analysis

Petitioner asserts that it sells vapor products only and does not sell cigarettes or tobacco products within this State.

Tax Law § 470 does not include vapor products in the definition of cigarettes or tobacco products. Therefore, Petitioner’s sale of vapor products does not constitute the sale of tobacco products subject to tax under Tax Law Article 20, and Petitioner is not required to obtain a certificate of registration as a dealer of cigarettes and/or tobacco products. However, beginning on December 1, 2019, Article 28-C of the Tax Law imposes a supplemental sales tax of 20% on the receipts of retail sales of vapor products. Petitioner’s product is a vapor product and thus, retail sales of Petitioner’s product made on or after December 1, 2019 are subject to the Article 28-C supplemental sales tax imposed on vapor products. Tax Law § 1183 requires that every person who intends to sell vapor products at retail in this state must obtain a vapor products dealer certificate of registration prior to engaging in sales of vapor products. Therefore, Petitioner must obtain a vapor products dealer certificate of registration if it intends to sell any vapor products at retail in this State.

In addition, the Tax Law requires that vendors selling tangible personal property or services within this State register with the Department for State and local sales and use tax purposes. *See* Tax Law §§ 1105 and 1134. Vapor products are tangible personal property and Petitioner must obtain a certificate of authority from the Department prior to making any sales of tangible personal property. In addition, persons who intend to sell vapor products must first obtain a sales tax certificate of authority before applying for vapor products dealer certificate of registration. *See* Tax Law § 1183(d).

DATED: November 24, 2020

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.