

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-00(46)S
Sales Tax
October 19, 2000

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S000510B

On May 10, 2000, the Department of Taxation and Finance received a Petition for Advisory Opinion from Mark S. Klein, Esq., One M & T Plaza, Suite 2000, Buffalo, NY 14203.

The issue raised by Petitioner, Mark S. Klein, Esq., is whether a hospital's lease of radiology equipment to a joint venture under the following set of facts is subject to State and local sales and use taxes.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner represents a hospital (the "Hospital") which has qualified as a nonprofit corporation and an exempt organization under Section 501(c)(3) of the Internal Revenue Code and Section 1116(a)(4) of the Tax Law. The Hospital has been issued an exempt organization certificate by the New York State Department of Taxation and Finance. The Hospital has purchased radiology equipment from an unrelated third party. The Hospital would like to begin leasing the equipment to a joint venture consisting of the Hospital and a group of radiologists (the "Joint Venture"). The Joint Venture is located on the Hospital premises. The Hospital will be leasing the equipment to the Joint Venture for use in the Joint Venture's professional radiology practice and will not be selling or leasing this (or similar) equipment to any other parties. The Joint Venture will be a for-profit limited liability company and will not constitute an exempt organization under the Internal Revenue Code or the Tax Law.

Applicable Law and Regulations

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(4) Retail sale. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property . . .

(5) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume . . . conditional or otherwise, in any manner or by any means whatsoever for a consideration

Section 1105(a) of the Tax Law imposes tax upon:

The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

Section 1116 of the Tax Law provides, in part:

Exempt organizations. (a) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

* * *

(4) Any corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition . . .

* * *

(b) Nothing in this section shall exempt:

(1) retail sales of tangible personal property by any shop or store operated by an organization described in paragraph (4), paragraph (5) or paragraph (6) of subdivision (a) of this section. . . .

Section 529.7(i) of the Sales and Use Tax Regulations provides, in part:

Sales by exempt organizations. (1) Except as provided in paragraphs (2) through (4) of this subdivision, sales of tangible personal property and services by exempt organizations are exempt from the sales and use tax.

(2) Retail sales of tangible personal property made by any shop or store operated by an exempt organization described in section 1116(a)(4), (5) or (6) are subject to the sales and use tax. A shop or store as used in this section includes any place or establishment where goods are sold from display with a degree of

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regularity, frequency and continuity as well as any place where sales are made through a temporary shop or store located on the same premises as persons required to collect tax. Vending machines alone do not constitute a shop or store. However, where vending machines are located in a defined area devoted to selling tangible personal property, then sales from such vending machines constitute sales from a shop or store.

Opinion

The Hospital is an exempt organization as described in Section 1116(a)(4) of the Tax Law. Sales of tangible personal property by such exempt organizations are exempt unless made by a shop or store operated by the organization. See Section 1116(b)(1) of the Tax Law. The Hospital will be leasing radiology equipment to the Joint Venture for use in the Joint Venture's professional radiology practice and will not be selling or leasing this (or similar) equipment to any other parties.

The Hospital's lease of radiology equipment to the Joint Venture will not constitute a sale made by a shop or store operated by an exempt organization under Section 1116(b)(1) of the Tax Law and Section 529.7(i) of the Sales and Use Tax Regulations. Accordingly, the Hospital is not required to collect and remit sales tax on its lease of such equipment. See Point-O-Woods Historical Society, Adv Op Comm T&F, June 25, 1997, TSB-A-97(36)S. This Advisory Opinion is limited to the facts submitted by Petitioner. Under certain circumstances, for example if Petitioner entered into equipment leases with more than one customer, Petitioner might be required to collect sales tax on its lease transactions.

DATED: October 19, 2000

/s/
Jonathan Pessen
Tax Regulations Specialist III
Technical Services Division

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