

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

TSB-A-02(24)S
Sales Tax
July 11, 2002

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S000727C

On July 27, 2000, the Department of Taxation and Finance received a Petition for Advisory Opinion from BICCGeneral Cable Industries, Inc., 4 Tesseneer Drive, Highland Heights, KY 41076-9753.

The issue raised by Petitioner, BICCGeneral Cable Industries, Inc., is whether the following transaction qualifies as a “trade-in” and would, therefore, result in a reduction of the amount of the receipt subject to sales tax.

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

Petitioner is a manufacturer and distributor of wire and cable products. Con Edison is one of Petitioner’s customers for cable products. Con Edison will be providing Petitioner with used cable, and Con Edison will send the used cable directly to Petitioner’s customer, a scrap dealer. The scrap dealer will pay Petitioner for the value of the copper derived from the used cable. Petitioner will then credit Con Edison an amount equal to the copper value derived from the used cable, minus a processing fee, against the purchase price of new cable from Petitioner. Petitioner will let Con Edison know how much credit it has accumulated with Petitioner for used cable at certain time intervals, probably monthly. Con Edison will be banking the value of the used cable with Petitioner and Petitioner will either let Con Edison offset that amount against already outstanding invoices or future invoices of Con Edison’s choosing, or Petitioner will invoice Con Edison for new cable and allow a credit for the value of the used cable on the same invoice. The invoice could be a zero amount or Petitioner could credit Con Edison for less than the value of the new cable, thus creating a balance due on the invoice.

Applicable Law & Regulations

Section 1101(b)(3) of the Tax Law provides, in part:

Receipt. The amount of the sale price of any property and the charge for any service taxable under this article . . . valued in money, whether received in money or otherwise . . . without any deduction for expenses or early payment discounts and also including any charges by the vendor to the purchaser for shipping or delivery . . . but excluding any credit for tangible personal property accepted in part payment and intended for resale. . . .

Section 526.5(f) of the Sales and Use Tax regulations provides:

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Trade-in. Any allowance or credit for any tangible personal property accepted in part payment by a vendor on the purchase of tangible personal property or services and intended for resale by such vendor shall be excluded when arriving at the receipt subject to tax. Only the net sale price of tangible personal property or the charge for services would be subject to tax.

Opinion

Petitioner is in the business of selling new cable. Con Edison is one of its customers. Con Edison will provide Petitioner with used cable. Con Edison will send the used cable directly to Petitioner's customer, a scrap dealer, for processing. The scrap dealer will pay Petitioner for the used cable. Petitioner will credit the amount it receives from the scrap dealer against the amounts due from Con Edison on Con Edison's outstanding invoices or against current or future invoices.

Section 1101(b)(3) of the Tax Law excludes from a vendor's receipts the value, in money, of tangible personal property accepted in part payment and intended for resale. In this case, Petitioner will receive money from the scrap dealer for used cable provided by Con Edison to Petitioner, and Petitioner will credit these amounts to the balance due from Con Edison on its purchases of new cable from Petitioner on an ongoing basis. Petitioner, when it bills Con Edison for its purchases of new cable, will apply the amount of credit accumulated by Con Edison against the purchase price of the new cable. Consequently, if the agreement between Con Edison and Petitioner provides that Con Edison is selling the used cable to Petitioner, and if Con Edison sends the used cable to the scrap dealer at the direction of Petitioner, then Petitioner will be considered to be accepting tangible personal property from Con Edison as "part payment and intended for resale." In that case, Petitioner's taxable receipts from the sale of the new cable to Con Edison may be reduced by the amount of such credits.

DATED: July 11, 2002

/s/
Jonathan Pessen
Tax Regulations Specialist IV
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NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.