

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-14(23)S
Sales Tax
July 22, 2014

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S130506A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner), [REDACTED]. Petitioner asks whether the transfer of tangible personal property to a New York limited liability company (LLC) in consideration for a pro rata share of interest in the LLC is subject to New York sales and use tax. Petitioner also inquires whether sales tax reciprocity credits will be allowed if the transfer is subject to sales and use tax.

We conclude that the transfer of tangible personal property to the LLC is not subject to sales and use tax.

Facts

A joint venture operating in California plans to partially liquidate by distributing tangible personal property to its 50/50 partners. The partners will transfer their interests in the tangible personal property to a New York limited liability company (LLC) in consideration for pro rata shares of interest in the LLC. The partners will not use the assets received from the joint venture before transferring the property to the LLC.

Analysis

The Tax Law specifically excludes from the definition of a retail sale the contribution of property in exchange for an interest in a partnership. *See* Tax Law § 1101(b)(4)(iv)(A)(V). For purposes of the Tax Law, a partnership includes a limited liability company. *See* Tax Law § 2(6). Accordingly, a transfer of tangible personal property to a limited liability company in exchange for an interest in the company is treated the same as a transfer of assets in exchange for an interest in a partnership. Therefore, the transfer of property to a limited liability company in exchange for an interest in the company will not constitute a retail sale subject to sales and compensating use tax.

Because no sales and use tax will be owed on the transfer of tangible personal property to a limited liability company in exchange for an interest in the company, Petitioner's questions about reciprocity tax credits are moot.

DATED: July 22, 2014

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

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