

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 payment reduction granted by an auction house to a purchaser placing a successful irrevocable bid on an item is excludable from the item’s sale price for sales tax purposes. We conclude that the payment reduction offered by Petitioner to an irrevocable bidder is not excludable from the receipt subject to sales tax.

**Facts**

Petitioner operates an auction business that sells various items of tangible personal property by live and/or online bidding. The highest bid for any auctioned item earns the right and obligation to purchase the item. Petitioner handles the resulting sale and transfer of the item and collects the sale proceeds and applicable sales tax.

Generally, items sold at auction have been consigned to Petitioner. In some cases, Petitioner guarantees the owner that the item will sell for a minimum amount. Petitioner may solicit an undisclosed third-party buyer to submit an “irrevocable order bid” for the item. This third-party buyer, known as an “irrevocable bidder” (IB), enters into an agreement with Petitioner to place an irrevocable bid on the item for a specific amount, and agrees to buy the item for that amount if no higher bid is made at auction. The IB may also bid higher if bidding exceeds the irrevocable bid amount. The existence of an irrevocable bid is announced at the auction, but the bid amount remains secret.

The payment due to Petitioner includes the “hammer price” (the amount of the successful bid) plus a buyer’s premium and overhead premium charged by Petitioner, as well as the applicable sales tax. If the IB is the winning bidder, Petitioner applies a negotiated “Fee” toward the total amount due, either as a flat dollar amount or as a percentage of the amount that the hammer price exceeds the guarantee to the owner. If the IB is not the successful bidder, the IB is still entitled to a fee from Petitioner, which is frequently structured as a percentage of the buyer’s premium, plus a percentage of the amount that the hammer price exceeded the amount guaranteed to the item’s owner. In either situation, Petitioner does not receive any reimbursement or other consideration from the owner of the item to cover Petitioner’s cost of the fee. The fee is intended to be an incentive for the IB to bid on the item. All sales made through Petitioner may be subject to a commission payable by the owner of the consigned item.

**Analysis**

Sales tax is imposed on “the receipts from every retail sale of tangible personal property...” Tax Law § 1105(a). “Receipt” is defined as:

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, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts.

Tax Law § 1101(b)(3).

Auctioneers are vendors for sales tax purposes. *See* 20 NYCRR 526.10(a)(1)(i) Example 1. Petitioner is a vendor when it sells property on its own account or auctions items that have been consigned to it for sale. A consignment is the “creation of an agency relationship wherein the consignee becomes the agent of consignor for the purpose of making sales of the consignor’s property, and is obligated to account to the consignor for the proceeds.” TSB-A-20(39)S *quoting* TSB-H-81(27)S.

When Petitioner sells an item at auction, it collects the hammer price, plus buyer’s and overhead premiums from the winning bidder. The hammer price and any premiums charged to the purchaser are included in receipt subject to sales tax, because they constitute the sales price for the auctioned item. Petitioner then remits the hammer price, minus its commission, to the owner. If the IB is the winning bidder, it agrees to pay Petitioner the hammer price plus the buyer’s and overhead premiums, and any applicable sales or use taxes on those amounts, which the agreement defines as the “Total Purchase Price.” Petitioner does not reduce the Total Purchase Price due from the IB, but instead applies a negotiated “Fee” to reduce the IB’s payment obligation. Petitioner does not reduce the amount paid to the owner, but rather agrees to cover any difference between the amount due to the owner and the IB’s fee in exchange for the IB’s agreement to purchase the item for a specified minimum bid. The IB’s fee is an expense borne by Petitioner and does not represent a reduction in taxable receipt. *See* 20 NYCRR 526.5(e). Therefore, we conclude that the fee offered by Petitioner to a successful IB is not excludable from the receipt subject to sales tax.

DATED: June 27, 2024

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/s/  
MARY ELLEN LADOUCEUR  
Principal Attorney

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.