

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-A-81(11)S  
Sales Tax  
August 17, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800902A

On September 2, 1980 a Petition for Advisory Opinion was received from Mobilehome Marketing, Inc., Outer Washington Street, Watertown, New York 13601.

The issue raised is whether Petitioner is obligated to collect sales tax where Petitioner arranges for the sale of tangible personal property (used mobile homes) between the buyer and the seller.

In the course of Petitioner's business it is contacted by owners of used mobile homes who wish to sell the same. Petitioner will then appraise the value of the mobile homes, list them as available for sale and show them to prospective buyers.

When a prospective customer decides to purchase one of the mobile homes payment is made directly to the seller. Petitioner does not handle the payment at any time, except with respect to a down payment which is placed in an escrow account pending completion of financing. Petitioner receives a commission, pursuant to the terms of the listing agreement entered into by Petitioner and the seller. Petitioner never takes title to the mobile homes, nor does Petitioner ever receive possession of such property. Petitioner transfers neither title to nor possession of the mobile homes to the purchasers. The sellers with whom Petitioner has dealt have never sold more than one mobile home each since the inception of Petitioner's business.

Section 1105(a) of the Tax Law imposes a tax on the "receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1101(b)(5) of the Tax Law defines the terms "sale, selling or purchase" as "Any transfer of title or possession or both . . . for a consideration, or any agreement therefor . . . ."

Sections 1131 and 1132 of the Tax Law require "vendors" of tangible personal property to collect sales tax from customers.

Section 1101(b)(8) of the Tax Law defines the term "vendor," in relevant part, as:

"(A) A person making sales of tangible personal property or services, the receipts of which are taxed by this article;

(B) A person maintaining a place of business in the state and making sales, whether at such place of business or elsewhere, to persons within the state of tangible personal property or services, the use of which is taxed by this article."

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Inasmuch as Petitioner does not transfer title to nor possession of the mobile homes in question to purchasers, and in light of the fact that the sales are consummated directly between sellers and purchasers, Petitioner cannot be said to be itself making retail sales of tangible personal property. Petitioner is therefore not a "vendor" with respect to the sales here under discussion.

Accordingly, inasmuch as Petitioner is not a "vendor", within the meaning of the provisions of the Tax Law referred to above, Petitioner has no obligation to collect New York State or local sales tax on the transactions involving the sale of mobile homes, as described above.

DATED: July 31, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau