

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

TSB-A-81(54)S  
Sales Tax  
November 27, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810428B

On April 28, 1981, a Petition for Advisory Opinion was received from The Augsbury Corporation, 520 Riverside Avenue, Ogdensburg, New York 13669.

The issue raised is whether the transfer of certain fixed assets (consisting primarily of a corporate aircraft) from Petitioner, The Augsbury Corporation (a subsidiary) to The Augsbury Organization (TAO, the parent) is subject to State and local sales tax.

Petitioner is a wholly owned subsidiary of TAO. TAO was organized in 1978 as a holding company. TAO holds the stock of Petitioner as well as other subsidiaries and provides certain management services on behalf of the affiliated group. After the incorporation of TAO, it was decided to transfer ownership of any assets not used directly in the principal business activities of Petitioner to TAO. This would permit Petitioner to determine profitability in its particular line of business without being burdened with the cost of an asset used in the management activities of TAO. Certain fixed assets (consisting primarily of a corporate aircraft) were transferred from Petitioner to TAO during November 1979. This transfer was recorded in Petitioner's accounting records as a debit to its Intercompany Accounts Receivable/Payable Account and a corresponding credit to the appropriate asset account. Subsequently, by resolution of its Board of Directors in December, 1979, Petitioner declared a dividend payable January 2, 1980. The resolution authorized payment from Petitioner's assets in a manner determined by management staff of Petitioner.

Section 1101(b) of the Tax Law provides the following definitions: "(4) Retail sales. (i) A sale of tangible personal property to any person for any purpose . . . . (5) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use of consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefore . . . ."

Section 1105(a) of the Tax Law imposes a tax on: "The receipts from every retail sale of tangible personal property . . . ."

The transfer of assets in the manner described is a "sale" within the meaning and intent of section 1101(b)(5) of the Tax Law. The establishing of the account receivable by Petitioner from its parent constitutes "consideration" for the transfer of the assets. Thus, Petitioner has made a "retail sale" pursuant to section 1101(b)(4).

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Accordingly, Petitioner's retail sale of tangible personal property is subject to tax pursuant to section 1105(a) of the Tax Law.

DATED: November 10, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau