

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

TSB-A-83(39)S
Sales Tax
October 11, 1983

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S830324A

On March 24, 1983 a Petition for Advisory Opinion was received from Helikon Furniture Co., Inc., 607 Norwich Avenue, Taftville, Connecticut 06380.

The issue is whether a bonus paid to a wholesaler by a retail customer for prompt delivery to the intermediary retailer is subject to sales tax.

An order for a substantial amount of furniture was placed by the Insurance Company of North America (hereinafter "I.N.A.") with Bestype Office Furniture, Inc., a franchised dealer for Petitioner. The details of the order and the price for the furniture were agreed upon by I.N.A. and Bestype.

I.N.A., concerned about timely delivery of the merchandise, contacted Petitioner (Helikon), which was Bestype's supplier. A separate agreement was negotiated directly between I.N.A. and Helikon whereby a penalty of 20% of the designer cost of the furniture would be paid to I.N.A. by Helikon in the event the merchandise was not delivered to Bestype on a timely basis. An equivalent bonus was payable by I.N.A. to Helikon if delivery was made on time. The merchandise was in fact delivered on time and Petitioner received the 20% bonus from I.N.A.

Based on the information submitted, Bestype Office Furniture, Inc. was the vendor of the furniture, within the meaning of section 1101(b)(8)(i) of the Tax Law, with respect to I.N.A., and the price of the furniture agreed upon between I.N.A. and Bestype, and actually paid by the former to the latter, constituted the receipts subject to the sales tax imposed under section 1105(a) of the Tax Law. Petitioner, on the other hand, was not the vendor with respect to I.N.A., and no sale of property occurred between the former and the latter.

Although the bonus paid by I.N.A. to Petitioner did in a sense increase the cost of the furniture to I.N.A., it did not increase the taxable receipts received by Bestype. A similar conclusion would have applied had the merchandise not been delivered on time. That is, the penalty payment would not have reduced the receipts subject to tax. See Future Motors v. State Tax Commission, Sup. Ct., Spec. Term, Albany County, November 27, 1978. Accordingly, the bonus paid by I.N.A. to Petitioner did not constitute a receipt subject to tax.

DATED: September 13, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau