

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

TSB-A-89(33)S  
Sales Tax  
September 14, 1989

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S890605A

On June 5, 1989 a Petition for Advisory Opinion was received from Edward Joy Co., 905 Canal Street, P.O. Box 6967, Syracuse, N.Y. 13217.

The issue raised is whether the purchase orders issued to Petitioner by General Electric are also acceptable as sales and use tax exemption certificates.

Petitioner submitted copies of several purchase orders for goods or services which Petitioner received from General Electric. The purchase orders also contain portions of the information which is required when a vendor completes forms ST-120, Resale Certificate and ST-121, Exempt Use Certificate. Neither form ST-120 nor ST-121 is reproduced in its entirety on the purchase orders.

Section 1132(c) of the Tax Law states, in part:

... it shall be presumed that all receipts for property or services ... are subject to tax until the contrary is established, and the burden of proving that any receipt ... is not taxable ... shall be upon the person required to collect tax or the customer. ...unless (1) a vendor, not later than ninety days after delivery of the property ... shall have taken from the purchaser a certificate in such form as the tax commission may prescribe (emphasis added)...

Section 532.4(c) of the New York State Sales and Use Tax Regulations states, in relevant part:

Use of exemption certificates. (1) To enable purchasers entitled to an exemption from the sales and compensating use tax to avail themselves of the exemption and for administrative purposes, the Department of Taxation and Finance provides various exemption forms, the use of which is governed by the conditions under which they are issued. A vendor is not required to collect tax from a purchaser who furnishes a properly completed exemption certificate.

(2) A certificate is considered to be properly completed when it contains the:

(i) date prepared;

(ii) name and address of purchaser;

(iii) name and address of vendor;

(iv) identification number of purchaser as shown on the certificate of authority, or exempt organization number as shown on the exempt organization

certificate. However, a farmer's exemption certificate does not have such a number.

- (v) signature of purchaser or purchaser's authorized representative; and
- (vi) any other information required to be completed on the particular form.

(3) Sales tax exemption certificates may be reproduced without prior permission from the department provided they are reproduced in their entirety. (emphasis added) If a person wishes to reproduce an exemption certificate that has modified language, he must obtain prior approval from Technical Services Bureau of the Taxpayer Services Division of the Department. Where approval is obtained, the user of the certificate should indicate on the face of the certificate the fact of such approval and the date obtained from the Technical Services Bureau. If prior approval is not obtained, a vendor may not accept such certificate.

...

Accordingly, whereas the purchase orders given to Petitioner by General Electric do not contain reproductions of forms ST-120, Resale Certificate nor ST-121, Exempt Use Certificate in their entirety and whereas General Electric has not indicated on the purchase orders that prior approval for such modified reproduction has been obtained from the Technical Services Bureau nor the date such approval was obtained, Petitioner may not accept the purchase orders as valid exemption certificates. Moreover, General Electric may not issue the purchase orders in lieu of the properly completed certificates.

In order to meet the requirements of Section 1132(c) of the Tax Law, General Electric must furnish Petitioner with properly completed forms ST-120, Resale Certificate or ST-121, Exempt Use Certificate.

It is noted that under the provisions of Section 532.4(c)(3), if General Electric wishes to reproduce an exemption certificate that has modified language, such modified certificate must be submitted for approval by the Technical Services Bureau.

DATED: September 14, 1989

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.