

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

TSB-A-92 (14)S
Sales Tax
February 26, 1992

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S911127A

On November 27, 1991, a Petition for Advisory Opinion was received from Teddy & Arthur Edelman Ltd., 28 Hawleyville Road, PO Box 110, Hawleyville, Connecticut 06440-0110.

The issue raised by Petitioner, Teddy & Arthur Edelman Ltd., is whether Petitioner must collect New York State and local sales and use taxes on leather ordered by a non New York customer and shipped to New York for use in assembly of chairs which are ultimately shipped outside of New York.

Petitioner received a Certificate of Authority from the Department of Taxation and Finance and collects and remits New York sales tax on sales made into New York. Petitioner has received orders for leather from a customer in a third state, e.g. California, with instructions that the material be billed to the customer in California but that the leather be shipped to an upholsterer in New York, who will use the leather in the manufacture of chairs.

Petitioner will ship the leather to the New York upholsterer by common carrier, usually UPS, and will bill the California customer for the leather. The New York upholsterer will assemble the chair, using the leather provided by Petitioner, will ship the chair to the California customer and bill the California customer for his services.

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

Section 526.7(e) of the Sales and Use Tax Regulations provides, in part, as follows:

(e) Transfer of possession. (1) Except as otherwise provided in paragraph three of this subdivision, a sale is taxable at the place where the tangible personal property or service is delivered or the point at which possession is transferred by the vendor to the purchaser or his designee.

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Example 5: A New Jersey resident purchases woolens from a New York State supplier and requests that the woolens be shipped to a New York State dressmaker to produce wearing apparel not intended for resale. The dressmaker will ship the completed apparel to New Jersey. Since the delivery of the woolens occurred in New York State the woolens are subject to tax. However, the charge for producing the wearing apparel is not subject to tax because delivery of the wearing apparel takes place in New Jersey.

(2) Except as otherwise provided in paragraph three of this subdivision, a sale of tangible personal property, in which the title to the property passes in New York State, but in which delivery occurs outside of New York State, is not subject to tax.

Section 1132(c) of the Tax Law provides in pertinent part, as follows:

For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all receipts for property or services of any type mentioned in subdivisions (a), (b), (c) and (d) of section eleven hundred five. . . are subject to tax until the contrary is established, and the burden of proving that any receipt, amusement charge or rent is not taxable hereunder shall be upon the person required to collect tax or the customer. Except as provided in subdivision (h) of this section, unless (1) a vendor, not later than ninety days after delivery of the property or the rendition of the service, shall have taken from the purchaser a certificate in such form as the tax commission may prescribe, signed by the purchaser and setting forth his name and address and, except as otherwise provided by regulation of the tax commission, the number of his registration certificate, together with such other information as said commissioner may require, to the effect that the property or service as purchased for resale or for some use by reason of which the sale is exempt from tax under the provisions of section eleven hundred fifteen, and, where the certificate requires the inclusion of the purchaser's registration certificate number or other identification number required by regulations of the tax commission, that the purchaser's certificate of authority has not been suspended or revoked and has not expired as provided in section eleven hundred thirty-four, or (2) the purchaser, not later than ninety days after delivery of the property or the rendition of the service, furnishes to the vendor: any affidavit, statement or additional evidence, documentary or otherwise, which the tax commission may require demonstrating that the purchaser is an exempt organization described in section eleven hundred sixteen, the sale shall be deemed a taxable sale at retail.

Section 1119 of the Tax Law provides, in part, as follows:

Sec. 1119. Refunds or credits based on proof of certain uses. --(a) Subject to the conditions and limitations provided for herein, a refund or credit shall be allowed for a tax paid pursuant to subdivision (a) of section eleven hundred five. . .

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(4) on the sale or use within this state of tangible personal property, not purchased for resale, if the use of such property in this state is restricted to fabricating such property (including incorporating it into or assembling it with other tangible personal property), processing, printing or imprinting such property and such property is then shipped to a point outside this state for use outside this state,

Therefore in accordance with the provisions of Sections 1105(a) and 1132(c) of the Tax Law and Section 526.7(e) of the Sales and Use Tax Regulations, Petitioner should collect sales tax from a customer located outside of New York State when Petitioner ships the goods to a third party located in New York State pursuant to the request of such customer unless the Petitioner has received a New York resale certificate or other appropriate exemption document from the customer. The purchase price paid by the customer to the Petitioner and the combined state and local tax rate in effect in the locality in which the goods are delivered should be used to compute the tax.

In the event customers purchases were for resale and the Petitioner does not obtain such documentation, then upon audit the burden of proof shall be upon the Petitioner to prove that its customer purchased the merchandise at issue for resale or that the sale was otherwise exempt from the imposition of sales tax. Steelcase, Inc., Dec St Tax Comm, July 3, 1988, TSB-H-87(219)S.

It should be noted, however, that if Petitioner has collected from its customers sales tax in accordance with Sections 1105(a) and 1132(c) of the Tax Law, pursuant to Section 1119 of the Tax Law the customer may apply for a refund of the taxes paid.

DATED: February 26, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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