

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

TSB-A-97(20)S  
Sales Tax

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S960923A

On September 23, 1996, the Department of Taxation and Finance received a joint Petition for Advisory Opinion from Costco Wholesale Corporation and The Price Co., Inc., 999 Lake Drive, Issaquah, Washington 98027. Petitioners, Costco Wholesale Corporation and The Price Co., Inc., provided additional information pertaining to the Petition on October 15, 1996.

The issues raised by Petitioners concern sales of merchandise to organizations that are exempt from State and local sales and compensating use taxes under Sections 1116(a)(1) and (4) of the Tax Law.

Petitioners submitted the following facts as the basis for this Advisory Opinion.

Petitioners are in the membership warehouse segment of specialty retailing. Their physical operations are almost identical. They operate cash and carry membership warehouses in over 20 states and in various international markets including Canada. Combined, they have over ten locations in New York State. Petitioners service both the retail and wholesale markets.

Petitioners sell a variety of merchandise including: food, candy, tobacco, sundries, appliances, electronics, tools, office supplies, furniture, automotive supplies, apparel, linens, jewelry, housewares, books, optical items, and prescription and over-the-counter medicines. Most of Petitioners' New York sales are cash and carry with the purchasers taking possession of the merchandise at Petitioners' registers in this State.

Petitioners do not require nor do they use any form of sales contracts, purchase orders or other sales instructions. Sales are strictly cash and carry with the only invoices being standard cash register receipts. While the receipts show membership numbers (*infra*), they are otherwise devoid of any names, addresses or other identification of the purchasers.

Only members who have paid membership fees and obtained membership identification cards are allowed access to Petitioners' warehouse facilities. Petitioners offer two types of memberships: Business Memberships and Goldstar (individual) Memberships. These memberships are equivalent to accounts. The membership records contain the names, addresses and phone numbers of members. For Business members, these records also include any New York State registration or exemption numbers furnished by the members when they initially sign up as members.

Business Memberships are available to businesses, nonprofit organizations and state or local governmental entities. A Business Membership is issued in the name of the underlying entity. With each Business Membership there is one "primary" cardholder who is responsible for the membership account. In addition to the primary member, there may be an unlimited number of "add-on" members; however, Petitioners discourage more than six add-ons per primary member. Unique membership numbers are issued to each primary and add-on member. Each member is issued a membership card showing his or her unique membership number, the name

of the underlying entity, the name of the individual member and a photo ID of the individual to whom the membership card is issued. A Business member may shop for either business or personal needs. Payments may be made with either business or personal funds using company or personal checks, credit cards or cash. The Business Membership fee is \$30 annually.

Goldstar Memberships are available to individuals who are members of certain eligible groups, such as employees of state, local and federal governments, schools, hospitals, banks, public utilities and other eligible groups. These individual memberships are stand alone memberships and are not directly associated with the qualified group. For example, an individual may qualify for a Goldstar Membership by showing his or her pay stub from a New York State agency, but this does not mean the agency is a member or that the individual is a representative or agent of that agency. The member may shop for personal use only, paying with cash, personal check or credit card. A Goldstar Membership requires payment of a \$35 annual fee.

As a general rule, Petitioners do not extend any exemptions from sales tax to Goldstar members. Exemptions are granted to Business members who have previously provided information that shows they qualify for the requested exemptions. This includes, for example, obtaining Exempt Organization Certifications (Form ST-119.1) after examining the original Exempt Organization Certificates (Form ST-119) issued by New York State. (For purposes of this Opinion, it is assumed that all of the organizations in question qualify for exemption from tax under Section 1116(a)(1) or (4).) However, Petitioners routinely encounter situations, such as the following, where they are asked to exempt purchases from sales tax.

1. An individual with a Goldstar Membership wishes to make a purchase on behalf of a specific exempt organization. The individual also wishes to pay for the merchandise with cash. The individual has a completed and otherwise valid Exempt Organization Certification executed by the exempt organization, but no purchase order or other documentation.
2. Assume the same facts as in situation one, except the individual has a letter from the exempt organization authorizing the individual to make this specific purchase on behalf of the organization. The letter does not mention what merchandise is to be purchased, but instead states the individual making the purchase is doing so on behalf of the organization. This letter would be kept by the applicable Petitioner with that day's sales records.
3. Assume the same facts as situation two, except the individual has a purchase order instead of the letter. The purchase order has the name of the exempt organization preprinted on it, and it appears to have been issued by the exempt organization. The purchase order is dated, signed and made out to the applicable Petitioner. However, it is not item-specific, but lists "office supplies, office furniture, and other supplies."
4. Assume the same facts as in each of the foregoing situations, except the organization is the member. The applicable Petitioner's cash register receipt will show the exempt organization's Business Membership number, and the membership records will reflect the organization's name and address and will include an Exempt Organization Certification.

5. An exempt organization signs up for a Business Membership at the local warehouse of the applicable Petitioner. As part of the sign up process, the organization brings in a copy of its original Exempt Organization Certificate (Form ST-119). At the same time it executes an Exempt Organization Certification (Form ST-119.1). However, the addresses shown on the two documents are not the same. It appears the organization moved sometime after it received its original Exempt Organization Certificate. (The same situation occurs when the true legal name shown on an Exempt Organization Certificate does not agree with a shorter "street" or "DBA" name shown on the Exempt Organization Certification.)

6. Assume the same facts as in situation five, except there are no discrepancies at the time the member signs up. However, over the years since originally signing up as a member, the organization apparently moves its offices. The address now shown in the applicable Petitioner's membership system does not match the address on either of the New York State forms.

7. The applicable Petitioner accepts a blanket Exempt Organization Certification from an organization. Petitioners question whether they are responsible to continually monitor the organization to verify it is still a qualified exempt organization.

8. An individual with a Goldstar Membership wishes to make a purchase on behalf of the public school where the individual works. The individual also wishes to pay for the merchandise with personal funds and will be reimbursed by the school at a later date. The individual does not have a letter or purchase order from the school.

9. Assume the same facts as situation eight, except the individual wishes to pay for the merchandise with a school check.

10. A teacher who is a Goldstar member wishes to purchase various school supplies he will use throughout the school year. As part of his contract with the school district, the school pays the teacher an annual per diem allowance for incidental items needed throughout the school term. The teacher is adamant that the purchase should be exempt from tax because he is an employee of the school district and is using his annual per diem to purchase supplies he will use in his classroom. The teacher wishes to pay for this purchase with cash or a personal check.

11. A public school has a Business Membership. An employee, who is both an "add-on" member on the school's membership and authorized to purchase on behalf of the school, wishes to purchase merchandise for the school's use and to pay with personal funds.

12. Assume the same facts as in each of the foregoing situations 8-11, except the individual has a letter issued by the school stating that the purchase is on behalf of the school or a purchase order dated, signed and made out to the applicable Petitioner indicating generic "office and cleaning supplies and other merchandise" are to be purchased.

13. A fire district has a Business Membership. An employee wishes to purchase merchandise for the district's use and to pay with cash. A purchase order from the fire district is not provided. However, the employee executes a Tax Exemption Certificate (Form AC-946).

Applicable Law and Regulations

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

Section 1116 of the Tax Law provides, in part,

Exempt organizations. (a) Except as otherwise provided in this section, any sale ... to any of the following ... or any use ... by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

(1) The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services or property of a kind not ordinarily sold by private persons;

\* \* \*

(4) Any corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, (except as otherwise provided in subsection (h) of section five hundred one of the United States internal revenue code of nineteen hundred fifty-four, as amended), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office ....

Section 1132(c) (1) of the Tax Law provides in part:

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 ... of any type mentioned in subdivisions (a) ... of section eleven hundred five ... are subject to tax until the contrary is established, and the burden of proving that any receipt ... is not taxable hereunder shall be upon the person required to collect tax or the customer. Except as provided in subdivision (h) or (k) of this section, unless ... the purchaser, not later than ninety days after delivery of the property ... furnishes to the vendor: any affidavit, statement or additional evidence, documentary or otherwise, which the commissioner 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. Where ... an affidavit, statement

or additional evidence referred to in the previous sentence is received within the time limit set forth therein, but is deficient in some material manner, and where such deficiency is thereafter removed, the receipt of ... such affidavit, statement or additional evidence shall be deemed to have satisfied all of the requirements of the preceding sentence. Where such ... an affidavit, statement or additional evidence has been furnished to the vendor, the burden of proving that the receipt ... is not taxable hereunder shall be solely upon the customer. The vendor shall not be required to collect tax from purchasers who furnish ... such an affidavit, statement or additional evidence in proper form ....

Section 529.1(d)(1) of the Sales and Use Tax Regulations provides, in part:

Any person or organization claiming exemption from tax must furnish its vendor with documentation substantiating its right to the exemption claimed before it may purchase exempt from tax .... In addition, the billing must be made directly to the person or organization and paid for from the funds of such person or organization, except as otherwise provided in this Title. Any transaction which is not supported by proper documentation is subject to tax at the time of purchase. See Part 532 (Collection of Tax) of this Title.

Section 529.2(b) of the regulations provides:

As purchaser. (1) New York State, or any of its agencies, instrumentalities, public corporations or political subdivisions (hereinafter referred to as New York State governmental entities) are not subject to sales or use tax when they are the purchaser, user, or consumer of tangible personal property ....

(2) New York State governmental entities as purchasers, users, consumers ... must exercise their right to exemption through the issuance of governmental purchase orders or the appropriate exemption document.

Section 529.7(h) of the regulations provides:

Sales to exempt organizations. (1) Any sale ... to or any use ... by an exempt organization to which an exempt organization certificate has been issued is exempt from sales and use tax.

(2) In order to exercise its right to exemption the organization must be the direct purchaser ... of record. It must also be the direct payer of record and must furnish its vendors with a properly completed exempt organization certification. *Direct purchaser* ... as used in this paragraph includes any agent or employee authorized by the organization to act on its behalf in making such purchases, provided the organization and its agent or employee are both identified on any bill or invoice. An organization is the direct payer of record where direct payment is made by the organization or from its funds directly to the vendor.

(3) An exempt organization certification is deemed to be properly completed when it contains the:

- (i) name and address of the vendor;
- (ii) name and address of the exempt organization;
- (iii) number assigned to the exempt organization certificate;
- (iv) signature of a responsible officer of the exempt organization; and
- (v) date the certification was executed.

(4) Sales to any member, officer or employee of an exempt organization are subject to the sales and use tax when the sales are for the personal use of the purchaser rather than the organization.

Section 532.4(b) of the regulations provides in part:

Burden of proof. (1) The burden of proving that any receipt ... is not taxable shall be upon the person required to collect the tax and the customer.

(2) A vendor who in good faith accepts from a purchaser a properly completed exemption certificate or, as authorized by the Department, other documentation evidencing exemption from tax not later than 90 days after delivery of the property ... is relieved of liability for failure to collect the sales tax with respect to that transaction. The timely receipt of the certificate or documentation itself will satisfy the vendor's burden of proving the nontaxability of the transaction and relieve the vendor of responsibility for collecting tax from the customer.

(i) A certificate or other document is "accepted in good faith" when a vendor has no knowledge that the exemption certificate or other document issued by the purchaser is false or is fraudulently presented. If reasonable ordinary due care is exercised, knowledge will not be imputed to the seller required to collect the tax.

### Opinion

Although the Petitioners have presented several specific situations, they are looking for general rules that apply to their sales of merchandise to organizations that are exempt from State and local sales and compensating use taxes under Sections 1116(a)(1) and (4) of the Tax Law. Petitioners' concerns center primarily on documenting exempt sales and methods of payment.

As indicated in the foregoing sections of the Tax Law and regulations, the burden of proving that Petitioners' receipts from their sales of merchandise are not subject to sales tax is upon Petitioners and their members. If Petitioners, in good faith, timely accept properly completed exemption certifications or other authorized documentation evidencing exemptions from tax (hereafter, exemption documents) from their members, Petitioners are relieved of their respective

liabilities for failure to collect sales tax with respect to the applicable sales and the burden of proving whether the sales are taxable rests solely upon the members. Petitioners are not relieved of this duty to collect tax if Petitioners have actual knowledge (i.e., more than a mere suspicion or belief) that the exemption documents are false or fraudulent. Where Petitioners accept the exemption documents in good faith, they are under no duty to investigate or police their members or to debate the taxability of the sales with such members. (See, Saf-Tee Plumbing v Tully, 77 Ad2d 1; Harron's Electric Service, Adv Op Commr T&F, October 14, 1981, TSB-A-81(44); Sharon P. Sheinfeld, Adv Op Commr T&F, August 7, 1990, TSB-A-90(39)S.)

Governmental entities that are exempt from tax under Section 1116(a)(1) may rely upon purchase orders, affidavits, letters and other evidence of exemption, such as the Tax Exempt Certificate (Form AC-946). Organizations that are exempt from tax under Section 1116(a)(4) of the Tax Law may rely upon the Exempt Organization Certification (Form ST-119.1). See, Sections 529.2 and 529.7 of the Sales and Use Tax Regulations.

The question of whether exemption documents are accepted in good faith is a factual matter that cannot be determined in an Advisory Opinion (see, Copelco Leasing, Adv Op Commr T&F, May 18, 1995, TSB-A-95(15)S). However, given the cash and carry operations exemplified by Petitioners, the following general principles should be considered when making determinations as to whether or not to accept such documents from members and to sell merchandise exempt from sales tax.

Petitioners understand that, in general, in order for a sale to be exempt from sales tax, an exempt organization must timely furnish Petitioners with documentation substantiating its right to the exemption claimed, any billing must be made out directly to the organization and any payment must be made from the funds of such organization. When an exempt sale is made to an exempt organization's agent or employee, both parties must be identified on any bill or invoice issued by Petitioners evidencing the sale. Petitioners are also cognizant that the merchandise being sold must be for use or consumption by the exempt organization. If an individual member, or an agent or employee of an exempt organization purchases merchandise for his or her personal use, then the sale is taxable.

Applying these principles to Petitioners' operations as illustrated, Petitioners cannot accept in good faith exemption documents presented by Goldstar (individual) members or make exempt sales of merchandise to these members. These individual memberships are "stand alone memberships and are not directly associated with the qualified group [exempt organization]." Members "may shop for personal use only paying with cash, personal check or credit card." The only bills or invoices evidencing the sales to Goldstar members (i.e., the cash register receipts) reflect only the individual's membership number and are "otherwise devoid of any names, addresses or other identification."

Exemption documents may be accepted in good faith from Business members (both "primary" and "add-on" members), and Petitioners may make exempt sales of merchandise to these members. This is so, provided that the Business membership is issued to an exempt organization for its official use only and provided the exemption documents are timely presented and properly completed as described in the regulations. Provided further, Petitioners must not have actual knowledge that the exemption documents are false or fraudulent. Such exemption documents



do not have to be item-specific and may be either single purchase or blanket certifications, as the case may be, in the appropriate circumstances. The "unique membership numbers" that Petitioners issue to their members and that are printed on the sales receipts from the cash registers are sufficient to associate the exempt sales with the exempt organization's Business Membership "accounts" that include these documents and other pertinent information. If, however, a Business membership may be used for business or personal needs, as described in the facts above, Petitioners may not make exempt sales to Business members unless a properly completed exemption document is timely presented by the purchaser for each transaction. Cash payments may be considered the funds of the exempt organization; however, payments by personal checks or personal credit cards may not. This is so, regardless of whether the exempt organization reimburses the purchaser at a later time.

Petitioners are not required to monitor Business members' exempt organization status or the information shown on members' exemption documents, such as names and addresses. As indicated on the Exempt Organization Certificate (Form ST-119), for example, the exempt organization is responsible for keeping information shown on its exemption documents up-to-date. An organization that does not keep its exemption documents current and that continues to make tax exempt purchases on the basis of false or fraudulent exemption documents is subject to civil and criminal penalties (see, Tax Law, §§ 1145 and 1817). Of course, if members advise Petitioners that their addresses or other information has changed, Petitioners are responsible for revising their records accordingly. Petitioners also are not required to request a copy of the Exempt Organization Certificate from their members or to compare this certificate to the Exempt Organization Certification (Form ST-119.1). If all of the entries have been completed on the Exempt Organization Certification and it has been properly signed, Petitioners may accept the certification to exempt sales to that exempt organization.

Notwithstanding the previous paragraph, if at any time Petitioners acquire actual knowledge that any exemption documents presented by their Business members are false or fraudulent, Petitioners will no longer be protected from the liability for failure to collect sales tax and the burden of proving that Petitioners' receipts from their sales of merchandise are not subject to tax will be upon Petitioners as well as the Business members. Thus, where Petitioners are aware of discrepancies in the names, addresses or other information shown on exemption documents presented by their members (e.g., discrepancies in such information shown on a member's Exempt Organization Certificate and on its Exempt Organization Certification as described in situations 5 and 6 above), Petitioners may not accept such documents in good faith and are at risk in making exempt sales on the basis of such documentation.



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Documentation substantiating an exempt transaction must be retained by Petitioners for at least three years following the date that the transaction was required to be reported to the Department of Taxation and Finance (see, 20 NYCRR 529.1(e)).

DATED: March 28, 1997

/s/  
John W. Bartlett  
Deputy Director  
Technical Services Bureau

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