

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

TSB-H-81 (43) S
Sales Tax
March 4, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800812A

On August 12, 1980 a Petition for Advisory Opinion was received from Tamas Friedman, 1873-5 Pitkin Avenue, Brooklyn, New York.

The issue raised is whether sales tax is due on one half of certain purchases of fuel oil. Petitioner contends that such purchases are exempt either because he purchased the heating oil as an agent of the City of New York or because he purchased the oil for resale to the City of New York.

Petitioner owns property at 1881-3 Pitkin Avenue. A furnace in Petitioner's building furnishes heat and hot water for his building and for 1873-5 Pitkin Avenue, a building owned by the City of New York Housing Preservation and Development Administration (HPDA). Petitioner purchased fuel, in his own name, to operate the furnace and was reimbursed by HPDA for one half of the cost of the fuel and any repairs and maintenance of the heating system. Such arrangement terminated as of October 19, 1980.

Section 1105(a) of the Tax Law imposes a tax on receipts from retail sales of tangible personal property. Section 1101(b) (4) (i) of the Tax Law defines the term "retail sale," in relevant part, as "A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property...." Consequently, receipts from a purchase for resale would not be subject to the tax imposed under section 1105(a). In the present instance, however, the applicable agreement between HPDA and Petitioner, dated December 14, 1979, provides that Petitioner was to supply heat and hot water to HPDA's building, and in return was to be reimbursed for one half of his oil bills and boiler and burner repair bills. Petitioner did not sell fuel to HPDA, but rather provided its building with heat and hot water. Petitioner's purchases of fuel consequently were not purchases for resale and thus do not come within the exclusion contained in section 1101(b) (4) (i) of the Tax Law, quoted above.

Petitioner contends in the alternative that the purchases of fuel oil were made by him as agent of the City of New York. Section 1116(a) (1) of the Tax Law provides that sales to political subdivisions of New York State are not subject to sales tax. The City of New York is such a political subdivision of New York State. Purchases for the City by an agent thereof would thus fall within the ambit of this exemption provision. However, inasmuch as Petitioner did not transfer the fuel oil itself to the City of New York Petitioner's contention that he purchased the fuel as agent for the City is not tenable. Further, even if there had been such a transfer of the property in question the Petitioner's statement of facts and his evidentiary submissions would not support a finding of agency, inasmuch as many of the important indicia of agency are not present. For example, nowhere is there demonstrated an explicit designation of Petitioner as agent for the City in buying the fuel oil, nor were such purchases made with the City's money drawn from a special fund created by the City for that purpose.

Accordingly, Petitioner's purchases of fuel for use in providing HPDA's building with heat and hot water were not exempt from the sales tax imposed by Article 28 of the Tax Law.

DATED: February 18, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau