

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

TSB-A-81(52)S
Sales Tax
November 17, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810415A

On April 15, 1981, a Petition for Advisory Opinion was received from Buffalo Refining Associates, 223 Ellicott Square Building, Buffalo, New York 14203.

The issues raised are:

- (1) Whether Petitioner when acting as a broker for the sale, purchase or acquisition of precious or strategic metals in the form of bullion, coins, ingots or other physical forms, between a refiner located outside of New York State and a New York State resident consumer, is obligated to assess, collect or report New York State sales tax on any transaction Petitioner shall be instrumental in negotiating;
- (2) Whether it is permissible for Petitioner to sell and deliver precious or strategic metals in the form of bullion, coins, ingots or other physical forms to any New York State corporation, business or individual with a tax identification number or tax exemption certificate without assessing, collecting or reporting New York State sales tax; and
- (3) Whether Petitioner is required to assess, collect and report New York State sales tax on sales where Petitioner delivers possession of precious metals or strategic metals in the form of bullion, coins, ingots or other physical forms to any customer not having a tax identification number or tax exemption certificate.

In issue (1) Petitioner acts only in the capacity of a broker between a local resident, who wishes to purchase 100 ounces of fine silver bullion, and an out-of-state supplier. Petitioner performs the following:

- (a) Quotes the current price, including Petitioner's commission, to the client (local resident);
- (b) Accepts the client's order and payment for the 100 ounces of silver (excluding local sales tax); and
- (c) Forwards the order along with payment (excluding commission) to the out-of-state supplier.

After receiving the order and payment, the out-of-state supplier fills the order and ships 100 ounces of silver bullion directly to Petitioner's New York State client. Neither Petitioner nor the out-of-state supplier charges or collects New York sales tax.

In issue (2), Petitioner makes delivery directly to its New York State customer. The customer, in this case, is a dealer and, as such, either has or is requested to obtain a sales tax vendor identification number. Upon presenting the sales tax vendor identification number to Petitioner, the customer makes payment and takes delivery of the silver. Sales tax is not charged or collected by Petitioner.

In issue (3) Petitioner sells and delivers silver bullion to its customer. Petitioner charges, collects and reports all State and local sales taxes.

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

Section 1101(b)(5) of the Tax Law defines the terms "sale, selling or purchase" as "Any transfer of title or possession or both . . . for a consideration, or any agreement therefor . . .". The Sales and Use Tax Regulations describes the sales tax as: "A 'Destination Tax', that is, the point of delivery or the point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate." 20 NYCRR 525.2(a).

Section 1101(b)(8) of the Tax Law defines the term "vendor", in relevant part, as:

- "(A) A person making sales of tangible personal property or services, the receipts of which are taxed by this article;
- (B) A person maintaining a place of business in the state and making sales, whether at such place of business or elsewhere, to persons within the state of tangible personal property or services, the use of which is taxed by this article."

Section 1131(1) of the Tax Law provides that: "Persons required to collect tax" or "persons required to collect any tax imposed by this article" shall include: every vendor of tangible personal property or services; . . ." Section 1132(a) of the Tax Law states, in part: "Every person required to collect the tax shall collect the tax from the customer when collecting the price . . . to which it applies"

Section 1132(c) of the Tax Law states, 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 . . . 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. Unless (1) a vendor 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 . . . , the number of his registration certificate, together with such other information as said commission may require, to the effect that the property or service was purchased for resale or for some use by reason of which the sale is exempt from tax under the provision of section eleven hundred fifteen, . . . the sale shall be deemed a taxable sale at retail."

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Petitioner is engaged in strategic or precious metals transactions as a broker and receives compensation for its services of finding customers desiring to purchase such metals from a refiner or producer, communicating offers between the parties and arranging the specific details of the transaction. Petitioner also makes sales for its own account to dealers and ultimate consumers. Such activities render Petitioner a "vendor" within the meaning and intent of section 1101(b)(8) of the Tax Law. Alan Drey Company, Inc. v. State Tax Commission 67 AD 2d 1055. Thus, Petitioner is a "person required to collect tax" pursuant to section 1131(1) of the Tax Law.

Accordingly, Petitioner, whether acting as broker or seller, must collect the State and local sales tax on all sales of precious or strategic metals delivered to customers within New York State, unless Petitioner receives a properly completed exemption certificate from its customers. Tax Law 1132(c).

DATED: October 29, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau