

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

TSB-A-89 (42)S
Sales Tax
November 14, 1989

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S890712B

On July 12, 1989 a Petition for Advisory Opinion was received from Audio-Video Corporation, 213 Broadway, Menands, New York 12204.

The issue raised is whether New York State and Local Sales or Use Tax applies to Petitioner, Audio-Video Corporation's, sale of audio-video equipment when:

1. Petitioner's sales representatives in the state of Florida fax or telephone an order for audio-video equipment to Petitioner's Albany, New York location. The audio-video equipment is shipped via common carrier from Petitioner's Albany location directly to the customer in Florida. Title to the audio-equipment transfers to the customer at the time the equipment is picked up by the common carrier. The customer receives a billing invoice with the equipment, payment of such bill to be submitted directly to Petitioner.

2. Petitioner's sales representatives in the state of Florida fax or telephone an order for audio-video equipment to Petitioner's Albany, New York location. However, due to not having the item in stock, Petitioner contacts the out-of-state manufacturer, instructing the manufacturer to ship the item, via common carrier, directly to the customer in Florida. Title to the audio-video equipment transfers to the customer at the time the equipment is picked up by the common carrier. Petitioner receives an invoice for the equipment from the manufacturer. Petitioner subsequently bills the customer, payment of such bill to be submitted directly to Petitioner.

Section 525.2 of the Sales and Use Tax Regulations states, in relevant part:

(a)(3) The sales tax is a "destination tax" that is, the point of delivery or point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate
...

Section 526.7 of the Sales and Use Tax Regulations states, in relevant part:

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

Example 2: A person, not a resident of New York State, purchases tangible personal property in New York State and has it delivered to his home out of state. The receipt from the sale is not taxable in New York State as delivery was made outside of New York State.

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

Example 6: Corporation A and Corporation B have their headquarters in New York State, and agree that Corporation A will purchase all of the assets of an out-of-state division of Corporation B. Title to the assets passes in New York State. Corporation A starts to operate the division, and does not move any of the tangible personal property. As delivery of the property occurred out-of-state, the sale is not subject to tax.

In the instant transactions, 1 and 2 enumerated above, the customer takes delivery of the audio-video equipment within the state of Florida. Inasmuch as delivery and transfer of possession occurs outside New York State, the provisions of Section 526.7(e)(1) and (2) of the Sales and Use Tax Regulations apply. Accordingly, the transactions are not subject to New York State and Local Sales or Use Tax. Petitioner is to, however, maintain documentation which substantiates delivery outside New York State.

DATED: November 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.