

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

TSB-A-90(42)S  
Sales Tax  
August 20, 1990

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S900417B

On April 17, 1990, a Petition for Advisory Opinion was received from Vanguard Corporation, 10 Java Street, Brooklyn, New York 11222.

The issue raised by Petitioner, Vanguard Corporation, is whether Petitioner (a manufacturer located within New York State) is required to collect sales tax on the receipts from a transaction wherein an out-of-state purchaser (hereinafter referred to as wholesaler), orders manufactured items from Petitioner and instructs Petitioner to deliver such manufactured items directly to the wholesaler's customer, a school district located within New York State.

Petitioner, a New York manufacturer of steel filing cabinets and related merchandise makes sales of such items to an out-of-state corporation engaged in the wholesale distribution of chairs, tables, desks, filing cabinets, etc. to school districts, colleges and universities. The wholesaler resells items purchased from Petitioner to school districts located within New York State. The wholesaler instructs Petitioner to deliver the items directly to such school districts.

The wholesaler is not registered as a vendor with the Department of Taxation and Finance for sales tax purposes. The wholesaler objects to the imposition of sales tax on its purchases which are delivered by Petitioner to school districts within New York State because the items purchased are intended for resale and are sold to school districts which are exempt entities for sales tax purposes. Petitioner has not received a New York State exemption document from the wholesaler.

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

Section 525.2(a)(3) of the sales tax regulation states:

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 .... 20 NYCRR 525.2(a)(3).

Additionally, section 1132(c) of the Tax Law provides, in part:

(c) 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... is not taxable hereunder shall be upon the person required to collect tax or the customer. . . unless (1) a vendor, not later than ninety days after delivery of the property. . . shall have taken from the purchaser a certificate in such form as the tax commission may prescribe. . . to the effect that the property. . . was purchased for resale or for some use by reason of which the sale is exempt from tax, the sale shall be deemed a taxable sale at retail ....

Section 1134 of the Tax Law states, in part:

Registration. (a)(1)(i) Every person required to collect any tax imposed by this article. . . , (ii) every person purchasing or selling tangible personal property for resale. . . shall file with the commissioner of taxation and finance a certificate or registration, in a form prescribed by him, at least twenty days prior to commencing business.. . or such purchasing, selling. . . whichever comes first.

Therefore, when Petitioner makes sales of tangible personal property to the wholesaler, with instructions to deliver the items directly to the school districts, delivery to the wholesaler is deemed to occur within New York State. Such sales of tangible personal property are subject to sales tax as imposed under Section 1105(a) of the Tax Law, the rate of tax being determined by the point of delivery or the point at which possession is transferred by Petitioner to the wholesaler or its designees, the school districts.

Accordingly, Petitioner should collect the appropriate state and local sales tax on the receipts from such sales to the wholesaler unless the wholesaler furnishes Petitioner a properly completed form ST-120, Resale Certificate as required under Section 1132(c) of the Tax Law. However, it is noted that because the wholesaler is not a registered vendor for sales tax purposes as required under Section 1134 of the Tax Law, the wholesaler cannot issue a valid form ST-120, Resale Certificate.

It is also noted, the fact that the wholesaler is selling the items purchased from Petitioner to New York State school districts which are exempt from paying state or local sales tax does not preclude the wholesaler from registering as a sales tax vendor and issuing the proper exemption certificate to Petitioner.

If the Petitioner does not collect the sales tax or receive a resale certificate from the wholesaler, then it will have the burden of proof under Section 1132(c) of the Tax Law of demonstrating that the sales in issue are not subject to sales tax. If On Audit or at a subsequent

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administrative hearing the Petitioner can prove that the wholesaler resold the equipment to an organization exempt from the payment of sales tax pursuant to Section 1116(a)(1) of the Tax Law, then it will not be liable for collection of sales tax on the sale to the wholesaler. Ruemil Contract Interiors, Inc., St Tax Comm, September 9, 1983, TSB-H-83(197)S.

DATED: August 20, 1990

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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