

**New York State Department of Taxation and Finance  
Office of Counsel**

TSB-A-20(13)S  
Sales Tax  
June 2, 2020

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S170627A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [ REDACTED ] (hereinafter “Petitioner”). Petitioner asks whether it is required to collect New York State sales tax when, as a federally licensed firearms dealer, it transfers a firearm from an out-of-state licensed dealer or other out-of-state seller to a New York State resident. Petitioner also asks whether the same service is taxable when it transfers a firearm from one New York State resident to another.

We conclude that Petitioner’s service of transferring a firearm from either an out-of-state seller or a New York State resident to a New York State resident is not subject to New York State sales tax.

**Facts**

Petitioner is a New York Federal Firearms Licensee (“FFL”). Petitioner also is a New York sales tax vendor that sells firearms from its own inventory.

A New York resident who purchases a firearm from an out-of-state FFL or other out-of-state seller pays the seller directly. However, with certain exceptions not relevant here, any firearm purchased out-of-state by a New York resident to be delivered into New York, such as through an online retailer, must be shipped to an FFL located in New York. The New York FFL will receive the firearm, verify the serial number of the firearm, record the acquisition and transfer of the firearm in the company records, and fill out the necessary federal and state forms (“the transfer services”).

The Petitioner also will contact the National Instant Criminal Background Check System (NICS) to perform a background check on the purchaser. The purchaser pays a fee to the Petitioner for the transfer services when receiving the firearm. The fee for the transfer services is set by Petitioner.

**Analysis**

With certain exceptions that are not relevant here, it is unlawful for any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the state where he or she resides any firearm purchased by such person outside the state where he resides. 18 USC § 922(a). However, a person who purchases a firearm from an out-of-state seller may take legal possession of the firearm if an arrangement is made with an FFL in the purchaser’s state of residence to perform certain legal requirements, such as a background check, before transferring the

firearm to the buyer in his or her home state. New York State has a similar statute, requiring private party transfers of firearms to be made through an FFL. *See* General Business Law § 898.

Tax Law § 1105(c) imposes sales tax on the receipts from every sale, except for resale, of certain enumerated services. Receiving firearms from other firearm sellers, creating the required records for federal and state regulatory purposes, contacting NICS to complete a background check, and ensuring that any State or local legal requirements for transfer are met are not among the enumerated services that are subject to sales tax. *See* Tax Law § 1105(c); TSB-A-12(8)S. Therefore, Petitioner is not required to collect sales tax on its service fee.

DATED: June 2, 2020

\_\_\_\_\_  
/S/  
DEBORAH R. LIEBMAN  
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.