

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-04(10)S
Sales Tax
April 27, 2004

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S020807A

On August 7, 2002, the Department of Taxation and Finance received a Petition for Advisory Opinion from Costco Wholesale Corp., 999 Lake Drive, Issaquah, WA 98027. Petitioner, Costco Wholesale Corp., provided additional information pertaining to the Petition on July 28, 2003.

The issue raised by Petitioner is whether its sales of postage stamps and “Priority Mail” envelopes with related postage affixed are subject to sales and compensating use tax.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner is in the membership warehouse segment of specialty retailing. It operates a chain of cash and carry membership warehouses in 37 states and in various international markets. Petitioner has more than 10 operating locations in New York State.

Petitioner services both the retail and wholesale markets. Petitioner’s operations are based on the concept that offering very low prices on a limited selection of national brand products, over a wide range of merchandise categories, will produce rapid inventory turnover and high sales volume. Petitioner sells a variety of merchandise including food, candy, tobacco, sundries, appliances, electronics, tools, office supplies, furniture, automotive supplies, apparel, linens, jewelry, housewares, books, optical merchandise, and prescription and over-the-counter medicines. Almost all of Petitioner’s sales are cash and carry with the purchaser taking possession of the merchandise in the store at Petitioner’s cash register.

Petitioner is in the planning stages of a program to sell United States Postal Service (USPS) postage. Initially Petitioner is planning to sell 100 postage stamps by themselves as one unit of sale and, in a separate unit of sale, 10 USPS “Priority Mail” envelopes with the related applicable postage affixed. The sales price will be at or below face value of the postage. Petitioner will buy both of these units of sale from the USPS. Upon purchase of either item from the USPS, Petitioner will take title to the product. Petitioner will not be an agent of the USPS and its sales will be independent of the USPS. The stamps signify the “first class” delivery service offered by the USPS. For the “Priority Mail” postage and related envelopes there will be a single charge for the unit of sale (10 postpaid USPS “Priority Mail” envelopes). Petitioner does not anticipate breaking out any separate value for the envelopes. USPS makes no charge to Petitioner for the envelopes when Petitioner purchases the USPS “Priority Mail” postpaid envelopes it intends to sell.

In order for an item to be sent “Priority Mail,” USPS operations require the item to be identified as being sent “Priority Mail.” Either the item is packaged in a USPS “Priority Mail”

envelope or container or a USPS “Priority Mail” sticker is affixed to existing packaging to alert postal employees of the class of service. The envelopes (or stickers) are a USPS requirement to effect priority handling versus handling under some other class of postal service.

Individuals purchasing “Priority Mail” delivery directly from the USPS currently pay \$3.85 for priority mail postage (based upon weight of not more than 1 lb.) to the USPS. Petitioner proposes to charge its customers no more than \$38.50 for the package of 10 “Priority Mail” envelopes with postage. “Priority Mail” envelopes are available without charge to patrons at USPS office locations. The USPS will also deliver “Priority Mail” envelopes in packages of 10 envelopes to the public for no charge (including no charge for shipping). The USPS provides “Priority Mail” sticker labels and “Priority Mail” tape for use by individuals to affix the labels and tape to an individual’s own envelopes and packages so that the package and envelope may be identified as requiring “priority mail” service. Such stickers and tape are provided by the USPS to the public at no charge for the stickers and tape (including no charge for shipping). The postage required to be affixed in order to receive “priority mail” service for such envelopes and packages is the identical \$3.85 cost (for packages weighing no more than 1 lb.) whether using a USPS provided envelope or container or the individual’s self-provided envelope or container (marked and identified with the USPS “Priority Mail” stickers and tape).

Petitioner is not selling collectible stamps or stamps that will be used for any purpose other than paying for the delivery services offered by the USPS.

Applicable law and regulations

Section 1105 of the Tax Law provides, in part:

Imposition of sales tax – . . . there is hereby imposed and there shall be paid a tax . . . upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(6) Tangible personal property. Corporeal personal property of any nature. . . .

Section 526.8 of the Sales and Use Tax Regulations provides, in part:

(a) *Definition.* The term *tangible personal property* means corporeal personal property of any nature having a material existence and perceptibility to the human senses. Tangible personal property includes, without limitation:

* * *

(7) postage stamps, when purchased for purposes other than mailing. . . .

Section 527.1(b) of the Sales and Use Tax Regulations provides:

Taxable and exempt items sold as a single unit. When tangible personal property, composed of taxable and exempt items is sold as a single unit, the tax shall be collected on the total price.

Example: A vendor sells a package containing assorted cheeses, a cheese board and a knife for \$15. He is required to collect tax on \$15.

Opinion

Petitioner is an independent retailer who will sell postage stamps and “Priority Mail” envelopes with appropriate postage affixed to be used by its customers for mailing, not collecting, purposes. Petitioner contends that these sales are not sales of tangible personal property but rather sales of the postal services which the stamps represent.

Postage stamps are evidence of prepayment for the service of mail delivery by the USPS. The purchase of a postage stamp is the purchase of the right to receive postal delivery services. Similarly, having the necessary amount of postage stamped or otherwise imprinted or embossed on mail as evidence of the right to receive such postal services is the purchase of an intangible rather than the purchase of tangible personal property. Such purchases are not subject to sales tax. Petitioner’s sales of stamps in this case will not be for collection or similar philatelic purposes or for amounts exceeding the face value of such stamps. See section 527.1(c) of the Sales and Use Tax Regulations; and *Web’s Coins, Ltd.*, Adv Op St Tax Comm, June 24, 1981, TSB-H-81(123)S for similar rules respecting coins.

Envelopes are tangible personal property, the sale of which is generally subject to tax under section 1105(a) of the Tax Law. Here, however, it is apparent that Petitioner is transferring the Priority Mail envelopes free of charge, as it will be selling a package of 10 such envelopes with Priority Mail service postage attached at a price not in excess of the face value of such postage. Accordingly, the sale by Petitioner of applicable Priority Mail postage, affixed to envelopes

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in packages of 10, is the sale of the right to receive Priority Mail service from the USPS. Such sale constitutes the sale of the intangible right to receive mail delivery service from the USPS and is not subject to sales tax.

DATED: April 27, 2004

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