

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

TSB-A-04(14)S
Sales Tax
May 25, 2004

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S030919B

On September 19, 2003, the Department of Taxation and Finance received a Petition for Advisory Opinion from Sony Music Entertainment Inc., 555 Madison Avenue, 8th Floor, New York, New York 10022.

The issue raised by Petitioner, Sony Music Entertainment Inc., is whether its purchases of hairstylist and makeup artist services which are performed as part of the creative process for the cover art of compact discs, videos, and DVDs it produces for sale are subject to the imposition of sales tax.

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

Petitioner creates and produces compact discs, videos, and DVDs for various artists on its in-house labels. As part of the creative process involved in producing the compact discs, videos, and DVDs, Petitioner hires hairstylists and makeup artists to perform particular hair and makeup designs on models and artists. After the models and artists have been made-up, their pictures are taken and the images are incorporated as part of the cover art design. The pictures are used as part of the packaging and covers of various products such as compact discs, videos, and DVDs that Petitioner sells to retail distributors.

Applicable law and regulations

Section 1105(c) of the Tax Law imposes tax upon the receipts from every sale, except for resale, of certain enumerated services, in part, as follows:

* * *

(2) Producing, fabricating, processing, printing or imprinting tangible personal property, performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale, upon which services are performed.

(3) Installing tangible personal property ... or maintaining, servicing or repairing tangible personal property....

Section 1105-B of the Tax Law provides, in part:

(a) Receipts from the retail sales of parts with a useful life of one year or less, tools and supplies for use or consumption directly and predominantly in the production of tangible personal property ... for sale by manufacturing, processing, generating, assembling, refining, mining or extracting shall be exempt from the tax imposed by subdivision (a) of section eleven hundred five of this article.

(b) Receipts from every sale of the services of installing, repairing, maintaining or servicing the tangible personal property described in paragraph twelve of subdivision (a) of section eleven hundred fifteen of this article, including the parts with a useful life of one year or less, tools and supplies described in subdivision (a) of this section, to the extent subject to such tax, shall be exempt from the tax on sales imposed under subdivision (c) of section eleven hundred five of this article.

Section 1115(a) of the Tax Law provides, in part:

Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(12) Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property ... for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery or equipment....

Section 1212-A(a) of the Tax Law provides, in part:

Any city in this state having a population of one million or more, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in any such city:

* * *

(2) a tax, at the same uniform rate...on the receipts from every sale of the following services: beauty, barbering, hair restoring, manicuring, pedicuring, electrolysis, massage services and similar services, and every sale of services by weight control salons, health salons, gymnasiums, turkish and sauna bath and similar establishments and every charge for the use of such facilities....

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Section 11-2002(h) of the Administrative Code of the City of New York imposes sales tax, in part, on:

Receipts from beauty, barbering, hair restoring, manicuring, pedicuring, electrolysis, massage services and similar services, and every sale of services by weight control salons, health salons, gymnasiums, turkish and sauna bath and similar establishments and every charge for the use of such facilities....

Opinion

Petitioner creates and produces compact discs, videos, and DVDs for artists on its in-house labels which are then sold to retail distributors. In the course of creating the cover art for the compact discs, videos and DVDs, Petitioner enlists the services of hairstylists and makeup artists. Section 1105(c) of the Tax Law imposes New York State sales tax on the receipts from certain enumerated services. Since services from hairstylists and makeup artists are not included within the services taxed under section 1105(c) of the Tax Law, these services are not subject to New York State or local sales and compensating use taxes (including the 1/4 percent tax imposed by section 1109 of the Tax Law in the Metropolitan Commuter Transportation District).

However, the city of New York imposes sales tax at the rate of 4 1/8% on the services of beauty, barbering, hair restoring, manicuring, pedicuring, electrolysis, massage and similar services. See section 11-2002(h) of the Administrative Code of the City of New York. The services of makeup people and hairstylists purchased by Petitioner constitute such services within the meaning and intent of section 11-2002(h) of the Administrative Code and are, therefore, subject to the 4 1/8% New York City tax (see *Matter of N.B.E. Productions, LTD.*, Dec St Tx Comm, February 6, 1985, TSB-H-85(103)S). Notwithstanding that Petitioner contends that the services are consumed in the creative process described in this Advisory Opinion, they are subject to the New York City tax. If such services are performed outside New York City they are not subject to tax.

As discussed above, the services of makeup people and hairstylists purchased by Petitioner are not included within the services taxed under section 1105(c) of the Tax Law. It is noted that if the services purchased by Petitioner are performed on tangible personal property, such as a wig, there could be a different result. Such services would not be subject to the tax imposed by New York City pursuant to section 11-2002(h) of the Administrative Code of the City of New York, but would be included among the enumerated taxable services under section 1105(c)(2) or (3) of the Tax Law. The wig might qualify as a production supply item eligible for exemption under section 1105-B(a) of the Tax Law. Services subject to tax under section 1105(c)(3) that are performed on such tangible

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personal property used or consumed directly and predominantly in the production of property for sale would also qualify for exemption from sales and use tax. See section 1105-B(b) of the Tax Law.

DATED: May 25, 2004

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