

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

TSB-A-17(10)S
Sales Tax
July 7, 2017

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S140528A

The Department of Taxation and Finance received a Petition for Advisory Opinion from Petitioner [REDACTED] (“Petitioner”). Petitioner asks how New York State and local sales and use taxes apply to its event management service, which includes the sale or rental of displays for use at trade shows, as well as a variety of services in connection with the trade shows. We conclude that Petitioner’s sales generally are taxable if delivery of the display occurs in New York, except for reasonable, separately-stated charges for certain nontaxable services.

Facts

Petitioner is a New York-based company that manufactures displays for use at trade shows. In addition to selling and renting its displays to its corporate customers, Petitioner performs a variety of services for those customers, prior to, at, and after the trade shows. Petitioner delivers the displays by common carrier to its customers at the trade shows, which take place all around the world. At the trade show sites, it hires and oversees independent contractors who install the displays. At the conclusion of the show, Petitioner’s contractors dismantle the display and ship the components by way of common carrier back to Petitioner’s warehouse in New York for storage. If the display is needed again, Petitioner pulls the display out of storage, reassembles and refurbishes it to make sure the display will work at the next event. In many cases, Petitioner is asked to make changes to the display in accordance with the customer’s changing needs before again shipping out the updated display to the next event. It then disassembles the display and has it shipped by common carrier to the event site.

Petitioner provides its customers with detailed invoices. One charge category is the rental/sale of customized displays and associated tangible personal property delivered to the customer at the trade show site. In addition to the rental/sale of displays, the invoices list a large number of categories of services, some of which Petitioner’s employees perform (designated below with a number starting with “P”).

- P1. Display Design. Create 3-D concepts, scaled floor plans, elevations and production drawings for customers to review.
- P2. Graphic Design. Create layouts and prepare files for production.
- P3. Graphic Production. Produce graphics on a variety of mediums following the completion of graphic design layouts.

- P4. Design. Perform exhibit and/or graphics design work. The completed design work is sent to the customer electronically. This service can be purchased from Petitioner as a stand-alone service.
- P5. Refurbishment. Refurbish and maintain event displays. Refurbishing involves updating customer-owned displays to fit the customer's individualized needs. This can include, for example, applying a new color laminate to a counter or applying new graphics to a pre-existing wall.
- P6. Logistics. Prepare displays for shipment to events. This includes erecting displays, inspecting displays, and packing them into crates.
- P7. Storage. Store displays at Petitioner's facility after use at a trade show.
- P8. Return Logistics. Inspect the contents of the crates for any damaged or missing items and then place the property in a specific designated storage area at Petitioner's New York warehouse.
- P9. Account Management. Manage a customer's overall account. This includes coordination of all in-house services (design, logistics, graphics, and fabrication teams), as well as arranging event site services.
- P10. Event Site Supervision. Travel to event site, and supervise contracted labor there.

Petitioner's remaining services are event site services. At each show, a contractor provides these services under Petitioner's supervision. Customers can request that Petitioner order any services that they deem necessary or they may obtain any of the services on their own. If the customer requests that Petitioner handle the ordering of any services, Petitioner bills the items separately with an included markup. These services (designated below with a number starting with "C") are as follows:

- C1. Drayage. Move customer's crated property from event site dock to the customer's booth space and back to the dock.
- C2. Installing. Assemble the display at the event.
- C3. Booth cleaning. Vacuum, shampoo, mop and wax the booth space.
- C4. Electric Power. Provide a connection to available electrical power source.
- C5. Rigging. Hang display elements from the ceiling of the facility.
- C6. Plumbing. Supply water and accompanying drainage to the booth space.
- C7. Cabling for Internet Access. Supply the necessary wiring for an Internet connection to the booth space. Petitioner also resells Internet access to some customers, which it purchases from an Internet access provider. In other cases, the customer contracts directly with an Internet service provider for the Internet access.
- C8. Catering: Provide food and/or drink during the event.
- C9. Show photography: Provide professional pictures of the booth space and its elements.
- C10. Lead retrieval system: Provide equipment to the customer that allows the customer to "read" badges of visitors to the display and thus gather contact information of visitors to the customer's display.
- C11. Dismantling. Remove the display's components after completion of the event.
- C12. Talent. Hire booth hosts/hostesses, presenters, audience gatherers.

Finally, Petitioner may also include shipping charges on its invoice when Petitioner is responsible for hiring a common carrier to transport the displays to their destinations. This can be one way shipping to the event location, or shipping to the event location and back to Petitioner's designated storage facility or to the next event.

Analysis

Sales tax applies to the receipts from every retail sale of tangible personal property (except as otherwise provided for in the Tax Law) and the receipts from every sale (excluding resales) of certain enumerated services, as discussed further below. *See* Tax Law §§ 1105(a),(c). Included in the definition of "receipts" are charges for the cost of delivering taxable property or services to a customer. *See* Tax Law § 1101(b)(3). Any expenses the vendor incurs in performing a taxable service are not deductible from the receipts, even if the vendor bills the customer for those expenses. *See Id.*; 20 NYCRR 526.5(e). In general, sales tax is a destination tax, meaning that the incidence and rate of tax is controlled by where the taxable service or property is delivered to the customer. *See* 20 NYCRR 525.2(a)(3).

Petitioner's outright sale or rental of displays and other tangible personal property to its customers for use at trade shows constitute taxable sales to the extent that the property is delivered to the customer or its designee in New York. *See* Tax Law § 1105(a). To the extent that the design work Petitioner does in relation to the displays (P1-P4) relate to merely designing a discrete item of tangible personal property that Petitioner then sells to its customer, those charges are considered part of Petitioner's receipts from the sale of tangible personal property and would be taxable if the tangible personal property is delivered in New York. *See* Tax Law §§ 1101(b)(5); 1105(a). Further, design work that involves coordinating the design of multiple items of tangible personal property for use in an interior space goes beyond designing a specific item of tangible personal property and constitutes interior decorating and design services, which are subject to subject to State and local sales taxes if delivered in New York State outside of New York City (*see* TSB-M-95[13]S) and subject to State sales tax only if delivered in New York City (*see* Tax Law § 1105(c)(7); TSB-A-03[35]S). Thus, with regard to the P1-P4 design services that go beyond designing discrete items of tangible personal property, for shows in New York City, Petitioner should collect only the State tax as long as the services are separately available for sale from Petitioner and its charges for the services are separately itemized on the invoice to the customer. *See Id.* With regard to such P1-P4 design services performed at shows held in the State outside New York City, Petitioner should collect State and local sales taxes. Petitioner's charges for refurbishing displays already owned by the customer (P5) are taxable if those refurbished displays are delivered to the customer in New York State. *See* Tax Law § 1105(c)(3). Petitioner's pre-event logistic service (P6) also constitutes a taxable service of servicing or maintaining tangible personal property if the property is to be delivered to the customer in New York State. *See* Tax Law § 1105(c)(3).

Petitioner's charges for storage of displays (P7) are subject to sales tax in the jurisdiction in New York where the customer delivers the display to Petitioner or its designee. *See* Tax Law §

1105(c)(4); TB-ST-340.¹ Thus, Petitioner's charge for packaging, transporting, and storing displays after a show in New York are subject to sales tax, as are Petitioner's post-event logistic charges (P8), which are an expense of providing its storage service.

Petitioner's charges for shipping tangible personal property it rents to a customer or that it has refurbished for a customer are considered part of the receipts from such taxable sales. *See* Tax Law §§ 1101(b)(5), 1105(a), (c)(3); 20 NYCRR 526.5(g)(Example 8). Thus, whether the shipping charges are taxable depends on whether the property is being shipped to a location in New York. Shipping charges for returning the display to Petitioner's storage facility are considered part of Petitioner's storage service and are subject to tax only when Petitioner or its designee takes possession in New York. *See* 20 NYCRR 526.5(g); TSB-A-08(64)S. Where Petitioner makes a single charge for taxable shipping and nontaxable shipping (e.g., a single charge for delivery of a display to a trade show held out-of-state and for shipping the display to New York for the final trade show of a tour), the charge would be subject to tax. *See* 20 NYCRR 527.1(b); TSB-A-07(17)S.

Petitioner's charge for account management (P9) is a charge for the expenses it incurs to provide all the services it is selling to its customers, some of which are taxable and some not. If a single charge is made for an expense item that is incurred by Petitioner in providing both taxable and nontaxable services or property, the reimbursement Petitioner receives from its customers for such expense is subject to tax. *See* TSB-A-07(17)S.

As previously mentioned, Petitioner does not perform the event site services (C1 – C12), except for the event site supervision (P10), which is explained in greater detail below. When customers request Petitioner to hire contractors to perform taxable services for an event held in New York, Petitioner purchases these services for resale and payment to the contractors from Petitioner would not be subject to sales tax if Petitioner provides a properly completed resale certificate. *See* 20 NYCRR § 532.4(b)(2). Most event site services involve performing taxable services to tangible personal property or real property when performed in New York and for these services Petitioner must collect sales tax from its customers on both the charge for the service and the added markup. *See* Tax Law §§ 1101(b)(3), 1105(c). Its charge for drayage (C1) is a charge for delivery or transportation and is taxable when performed in New York, as discussed above. Its charge for installing the displays (C2) is a service for installing tangible personal property or repairing, servicing, or maintaining real property and is thus subject to tax. *See* Tax Law § 1105(c)(3), (5). Installing property that, when installed, constitutes a capital improvement, is excluded from the aforementioned tax; here, though, Petitioner's installation services do not qualify for the capital improvement exclusion because the displays are not intended to be permanent. *See Id.*; Tax Law § 1101(b)(9)(i)(C). Petitioner's charges for plumbing, rigging, electrical power, cabling, and booth cleaning (C3 – C6) are all services to real property or tangible personal property and are taxable if they are provided in New York. *See* Tax Law § 1105(c)(3), (5).

Whether Petitioner's sale of photographs of the show (C9) is taxable depends on the means by which the photographs are delivered. If the photographs are delivered to the customer in tangible

¹ To the extent that TSB-A-05(28)S states that storage services are taxable when the storage facility is in New York, this no longer reflects Department policy. *See* TB-ST-340.

form or by tangible means (e.g., on film or on a thumb drive), the charge for the photographs is taxable if delivery is in New York. *See* Tax Law § 1105(a); TSB-A-05(34)S; TSB-A-08(22)S. If the photographs are delivered by other than tangible means, the charge is not taxable. *See Id.* The location of the photo shoot does not affect the tax status of Petitioner's sales of photographs. *See* TSB-A-09(56)S.

Petitioner's charge for lead retrieval equipment (C10) that it has rented from a third party for its customers to use in compiling potential customer information is taxable as the sale of tangible personal property if equipment is delivered to the customer at a show in New York. *See* Tax Law §§ 1101(b)(5), 1105(a)(1); 20 NYCRR 526.7(e).

Dismantling (C11) is not one of the services subject to sales tax. *See* Tax Law § 1105(c). A charge for dismantling is therefore not taxable if the charge is reasonable in relation to the charges for the other services provided by Petitioner, the dismantling service may be purchased separately from Petitioner, and Petitioner makes a separate charge for the dismantling service. *See* TSB-A-85(16)S. Petitioner's talent charge (C12) also is not taxable.

Petitioner's event site supervision charge (P10) is a single charge for supervising the performance of both taxable and nontaxable services Petitioner is providing, through contractors, to the customer at the trade show and is thus taxable. *See* TSB-A-88(45)S. Petitioner incurs travel and living expenses in providing this service, which is listed as a single charge on its invoices. Since this expense is incurred while Petitioner is performing a taxable service, this expense too is taxable. *See Id.*

DATED: July 7, 2017

/S/

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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.