

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

TSB-A-82(43)S
Sales Tax
December 7, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810929B

On September 29, 1981, a Petition for Advisory Opinion was received from Corporate Graphics, Inc., 655 Third Avenue, New York, New York 10017.

Petitioner inquires as to its obligation to collect sales tax on its charges for the designing of corporate annual reports. Petitioner is presently under audit.

Petitioner is engaged in the business of designing annual reports for publicly held corporations. Its contracts with its customers provide for the payment of a "design fee," representing an "overall charge for the designing of the booklets, as well as for the reimbursement of expenses. Such expenses include "travel expenses (air, railroad, local, hotel, meals, tips, etc.), telephone calls, costs of messengers, freight, parking, auto rentals, xeroxes, stats, pictures (black and white and color (C-prints)." Other reimbursed expenses include photographers' travel expenses (although photographers' fees are paid directly by the client) and "On Press Expenses," which are normal travel and telephone costs incurred by Petitioner in fulfilling its contractual obligation to examine and approve or disapprove the printer's first run of the annual reports. The printer engaged to produce the reports is selected and paid directly by Petitioner's client (except for one instance during the audit period at issue, where Petitioner made a subsequently reimbursed payment). After the completed design is approved by the customer, it is sent to the client's designated printer either by the client or by Petitioner. After production the reports are shipped by the printer to Petitioner's client. Finally, the contract between Petitioner and its client provides that if the client causes a delay in the scheduled operations, the client is required to pay Petitioner \$1,000 for each day of overtime necessary to bring the job back on schedule.

Section 1105(a) of the Tax Law, contained in Article 28, imposes the State sales tax on "the receipts from every retail sale of tangible personal property, except as otherwise provided in this article." The term "retail sale" is defined, in relevant part, in section 1101(b)(4) of the Tax Law, as "a sale of tangible personal property to any person for any purpose, other than (A) for resale . . . , or (B) for use by that person in performing" certain taxable services under specified circumstances. The term "receipt" is defined, in relevant part, in section 1101(b)(3) of the Tax Law, as "the amount of the sale price of any property and the charge for any service taxable under this article, valued in money . . . without any deduction for expenses . . ." The foregoing is equally applicable to the New York City, Yonkers and Metropolitan Commuter Transportation District sales taxes imposed under sections 1107, 1108 and 1109 of the Tax Law, respectively, and to local sales taxes imposed under the authority of Article 29 of the Tax Law. The applicable tax in each instance is that imposed by

or for the jurisdiction within which the point of delivery to the purchaser or his designee is located. 20 NYCRR §525.2(a)(3).

In the present instance Petitioner is engaged in making retail sales of tangible personal property (printer-ready designs), and is accordingly required to collect the sales tax applicable at the place of delivery of such property to Petitioner's customer or such customer's designated printer. Where such delivery takes place outside of the State, no tax is due. The "receipts" on which the tax is to be based is the entire payment by the customer to Petitioner, as outlined above, including the design fee, reimbursed expenses and on-press expenses. Matter of Fred Gardner Co., Inc., State Tax Commission, October 3, 1980, TSB-H-80(200)S. This conclusion is in accord with section 526.5(e) of the Sales and Use Tax Regulations, which provides as follows: "Expenses. All expenses incurred by a vendor in making a sale, regardless of their taxable status and regardless of whether they are billed to a customer are not deductible from the receipts.

Example 1: A photographer contracts with a customer to furnish photographs at \$50.00 each in addition to expenses. The customer is billed as follows:

Photographs (2)	\$100.00
Model fees	60.00
Meals	10.00
Travel	25.00
Drops (Flowers)	<u>5.00</u>
Total Due	\$200.00

Receipt Subject to Tax \$200.00" 20 NYCRR 526.5(e).

As to the single instance where Petitioner made a subsequently reimbursed payment to the printer, the following would apply. If the payment to the printer was made on behalf of the client, as agent therefor, and the appropriate sales tax was paid to the printer, then no tax need be collected from the customer. In any other case Petitioner would be purchasing the completed catalogues for resale, and would be required to collect tax from its customer in the full amount charged.

DATED: November 17, 1982

Frank J. Puccia
Director
Technical Services Bureau