

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

TSB-A-85(11)S
Sales Tax
May 20, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S830308A

On March 8, 1983 a Petition for Advisory Opinion was received from Chermayeff and Geismar Associates, 830 Third Avenue, New York, New York 10022.

The issue raised is whether, in conjunction with the performance of Petitioner's service, the temporary transfer of certain items of tangible personal property by Petitioner to its client will convert the transaction from the status of an exempt service to a retail sale of tangible personal property subject to tax under section 1105(a) of the Tax Law.

Petitioner is a New York partnership engaged in the business of providing design services. Petitioner provides professional services to its clients in connection with designs for (1) exhibitions for museums, government agencies, and other clients; (2) graphic identification programs, for a variety of institutions, including trademarks and logos and guidelines for their application to signs, packages, letterheads, etc.; (3) financial reports to shareholders of corporations, brochures, posters, and other graphic materials; and (4) signs, colors and forms to be incorporated into architectural projects.

Petitioner develops the creative and conceptual framework for each design project and supervises the preparation of items that illustrate and define the design. Petitioner does some of its own technical work, but also retains others to assist in the preparation of visual presentations such as paste-ups, layouts, mechanicals, models, diagrams, photographs, architectural drawings, specifications, etc., which accurately present and define Petitioner's design concepts so that these concepts will be accurately communicated to the client and others who must produce the final product.

Petitioner states that such visual presentations (including paste-ups, mechanicals, layouts, etc.) remain the property of Petitioner and never become the property of the client but may be temporarily transferred to the client or an independent contractor for the limited purpose of having the contractor accurately produce the design concept. In the case of financial reports and other graphics projects, artwork and mechanicals are usually temporarily transferred to a printer contracted by the client to be photographed or otherwise converted to printing plates. After printing, the artwork and mechanicals are returned to Petitioner. The printer has no right to alter or in any way retouch the work that Petitioner has done.

The taxability of temporary transfers of tangible personal property under circumstances similar to Petitioner's has been addressed in Matter of Vignelli Associates, Ltd., et. al. State Tax Commission, February 11, 1981, TSB-H-81(26)S. Therein the State Tax Commission determined "That since the transfers of possession of graphic presentations of design concepts were temporary

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for the purpose of reproduction only, without the right to alter or retouch the same, title thereto at all times remaining in Vignelli Associates, Ltd., they did not constitute taxable sales."

Pursuant to 20 NYCRR 526.7(f)(1) and (2), the granting of a right to reproduce is not a license to use or a sale and is not taxable. Mere temporary possession or custody for the purpose of making a reproduction is not deemed to be a transfer of possession which would convert the reproduction right to a license to use. (Matter of Frissell v. Mc Goldrick, 300 N.Y. 370; 88 N.Y.S. 2d 896; 91 N.E. 2d 305 (1950).)

Accordingly, the transfer of design concepts by Petitioner to its customers in the form of visual presentations under the circumstances described herein does not constitute the sale of tangible personal property taxable under section 1105(a) of the Tax Law.

DATED: April 30, 1985

FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth and is
subject to verification on audit.