

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

TSB-A-85(56)S
Sales Tax
November 7, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S850221A

On February 21, 1985 a Petition for Advisory Opinion was received from V. H. Blackington & Co., Inc., P.O. Box 1300, Attleboro Falls, Ma. 02763.

The issue raised is whether Petitioner is required to remain registered as a sales tax vendor and collect and remit sales and compensating use tax.

Petitioner is a manufacturer and wholesale distributor of uniform insignia. Petitioner states that it is currently registered as a vendor in New York because of a voluntary relationship with two customers in New York whereby Petitioner collects and remits the appropriate sales tax. Petitioner states further that this relationship with its customers terminated as of February 28, 1985 and Petitioner therefore proposes to cancel its sales tax registration with New York State.

Petitioner maintains that it does not meet the criteria of the term "vendor" for sales and use tax registration purposes because: it does not make any deliveries into New York State other than by common carrier or by mail; it does not maintain a place of business in New York State as defined under 20 NYCRR 526.10(c); and it does not solicit business in New York State as defined in 20 NYCRR 526.10(d).

The Sales and Use Tax Regulations, in clarifying the status of interstate vendors, provide as follows:

"(e) Interstate vendors. (1) A person outside of this State making sales to persons within the State, who solicits the sales in New York, as defined in subdivision (d) of this section, or who maintains a place of business as defined in subdivision (c) of this section, is required to collect the sales tax on the tangible personal property delivered in New York or the services performed in New York.

(2) A person making sales to his customers within the State, who has solicited such sales by the interstate distribution of catalogs or other advertising material by mail and who delivers the merchandise through the mail or by common carrier, and who neither maintains a place of business as defined in subdivision (c) of this section, nor solicits business as defined in subdivision (d) of this section, is not required to register as a vendor. However, if such person registers voluntarily, he is under the same obligations as any other vendor." (Examples deleted) 20 NYCRR 526.10.

Subdivisions "(c)" and "(d)" of the Regulations referred to above state as follows:

"(c) Maintaining a place of business. A vendor shall be considered to maintain a place of business in the State if he, either directly or through a subsidiary, has a store, salesroom, sample room, showroom, distribution center, warehouse, service center, factory, credit and collection office, administrative office or research facility in the State." 20 NYCRR 526.10

"(d) Soliciting business. (1) A person is deemed to be soliciting business if he has employees, salesmen, independent contractors, promotion men, missionary men, service representatives or agents soliciting potential customers in the State".

(2) A person is deemed to be soliciting business in New York if he distributes catalogs or other advertising material, in any manner in the State.

(3) A person is deemed to be soliciting business if he places advertisements in New York newspapers or over New York radio or television stations, and either requests that orders, payments or inquiries be sent to a New York address or delivers orders to New York in vehicles that he controls." (Examples deleted) 20 NYCRR 526.10

Inasmuch as Petitioner registered voluntarily with the Tax Commission as a vendor and does not otherwise qualify as a person required to collect tax, Petitioner is not compelled to remain registered as a New York State sales tax vendor or to re-register as a vendor as long as none of the above conditions are met. Spiegel, Inc., State Tax Commission Advisory Opinion, August 31, 1981, TSB-A-81(26)S.

DATED: August 28, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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