

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

TSB-A-86(15)S
Sales Tax
April 24, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S851029A

On October 29, 1985 a Petition for Advisory Opinion was received from George Silver, 41 East 42nd Street - Room 619, New York, N.Y. 10017.

The issue raised is whether a letter by Petitioner's customer, which states the percentage of out-of-state addresses contained in a mailing list, constitutes proper documentation for exempting a portion of the total mailing charge from sales tax.

Petitioner, a printer and mailer, states its activities consist of producing mailing labels from lists stored on magnetic tape which are owned and supplied by its customers, addressing envelopes, inserting promotional material, sealing, affixing postage and delivering the material to the post office. Petitioner states it collects tax on that percentage of its sales which, based on written information from the customer, represent the number of letters mailed to destinations within New York State.

Separately addressed herein is the tax treatment of

- (1) sales of promotional material produced by the Petitioner;
- (2) sales of mailing services performed by Petitioner, including the sale of envelopes and labels, the services of imprinting labels and affixing them to envelopes, and the services of collating, folding, inserting, sealing and posting.

Issue 1.

Section 1105(a) of the Tax Law imposes a tax on "(t)he receipts from every retail sale of tangible personal property, except as otherwise provided in this article".

Section 1132(c) of the Tax Law provides, in part: "For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all receipts for property or services of any type mentioned in subdivisions (a), (b), (c) and (d) of section eleven hundred five . . . are subject to tax until the contrary is established, and the burden of proving that any receipt . . . is not taxable hereunder shall be upon the person required to collect tax or the customer."

Sales and Use Tax Regulation 525.2(a)(3) states "(t)he sales tax is a 'destination tax', that is, the point of delivery or the point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate".

Accordingly, a printer delivering printed or other duplicated advertising matter to a customer in New York State must collect the statewide and local sales tax in effect at the locality where possession of the property is transferred to the customer, even if the customer will subsequently send some or all of the matter to persons outside of the State.

A printer dispatching printed or other duplicated advertising matter from within New York State directly to recipients designated by its customer must collect, on its entire printing charge, the sales tax in effect at the point from which the mailing service occurs, unless it can substantiate the percentage of out-of-state destinations on the mailing list and the addresses of all in-state recipients. Customer purchase orders, shipping instructions, sales contracts, and similar documents giving mailing directions are acceptable as proof of the destinations.

Where records establishing the number of addressees in each New York State taxing jurisdiction are not available, the alternative method described below may be substituted to determine State and local sales and use taxes, provided the following conditions are met:

- (1) The mailing must include points throughout New York State.
- (2) If the mailing list includes out-of-state mailing and is compiled by geographic location, an actual count of out-of-state mailing should be made. If the list is not compiled by geographic location, a sampling technique, utilizing the lesser of 10% of the list or 5000 mailing pieces, may be employed.
- (3) The actual number of pieces mailed to New York City must be determined. Sampling under the conditions in Item 2, may be used.

Under this method an alternative rate, based on the population of New York State (excluding New York City) and the combined tax rates imposed thereon, is applied to the New York State (excluding New York City) mailings and the currently imposed rate is applied to New York City mailings. Each invoice rendered for mailing services under the alternate method must state the total pieces dispatched, the number of pieces taxable at the New York City tax rate, and the number of pieces mailed to other New York State destinations at the currently effective alternative rate. This rate and the statewide locality distribution percentage may be obtained from Department of Taxation and Finance Publication 831, Supplementary Collection and Reporting Instructions for Printers and Mailers, which is amended periodically to reflect rate changes. To receive each updated issue, a printer or mailer may request to be placed on the mailing list maintained by the Tax Department for that purpose. Detailed instructions for the application of the alternate rate method are provided in Form ST-152 (5/71 and 5/77), Collection and Reporting Instructions for Printers and Mailers.

The alternative tax rate formula may be applied only to sales of promotional material, such as free gifts and samples, advertising literature, catalogs, sales and ordering forms, business reply envelopes, displays, brochures, and corporate annual reports. Printed matter upon which clerical,

office typing or computer printing operations must be performed to complete it for the senders use and to prepare it for the individual recipient, is subject to tax at the location where the actual mailing service occurs. This category of mailings would comprise invoices, statement forms, payment notices, letterheads, and like items which by their contents are not interchangeable with other addressees on a mailing list.

When the mailing contains items, each of which is treated differently for sales tax purposes, the appropriate sales tax treatment may be applied to each component of the mailing provided adequate records of substantiation of the charges for each component are maintained. For example, the alternate method of computing sales tax may be applied to advertising brochures enclosed with monthly invoices, even though the alternate method cannot be used for the invoice portion.

Issue 2.

Promotional material mailed by Petitioner to its customer's designees is considered to be used at the point to which it is mailed. Therefore, no tax is due when such material is mailed out of the State. However, outside mailing envelopes and address labels used to mail printed matter from a point in New York State through a New York post office are fully taxable as their use occurs in New York State, notwithstanding the fact that all or a portion of the contents may be subject to the alternate taxing method. (See Publishers Clearing House, State Tax Commission Advisory Opinion, Jan. 14, 1983, TSB-A-83(1)S).

Accordingly, Petitioner's receipts from the sale of outside envelopes and address labels including its services of imprinting and affixing the labels to the envelopes are subject to the tax in effect at the point of mailing.

Petitioner's charges for the services of folding written or printed matter, inserting it in envelopes, sealing, affixing stamps or metering, mailing, and the cost of postage are not taxable if segregated from the taxable receipt on the customer's bill. The exempt services may be combined in a single amount under the designation "non-taxable mailing". (See Form ST-152, [5/71 and 5/77], supra; see also Capital District Mailing Co., State Tax Commission Advisory Opinion, October 28, 1985, TSB-A-85(58)S).

With respect to the foregoing it should be noted that whenever a vendor renders to its customer an invoice which includes both taxable and exempt charges, the taxable amount must be stated separately thereon, or the entire receipt will be subject to tax. (20 NYCRR 533.2 [a][1]; [b][2]).

Furthermore, pursuant to section 1132 of the Tax Law, Petitioner is relieved from collecting tax on its sales of promotional material and services in each instance where the customer has supplied a valid Exempt Organization Certificate (Form ST-119.), or a Direct Payment Permit (Form AU-297).

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Finally, it is recommended that Petitioner review Department of Taxation and Finance Publication 842, Sales Tax Information for Printers.

DATED: April 24, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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