

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

TSB-A-89 (19)S  
Sales Tax  
July 17, 1989

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S890329A

On March 29, 1989 a Petition for Advisory Opinion was received from Garden Way Incorporated, 102nd Street & 9th Avenue, Troy, N.Y. 12180.

The issues raised are:

1. Whether certain "promotional covers" (envelopes) used by Petitioner are exempt from sales tax pursuant to Section 1119(a)(4) of the Tax Law, and
2. Whether the "promotional covers" are promotional materials, the use of which is considered to occur at the destination to which they are mailed?

The "promotional covers" (envelopes) which Petitioner uses to mail promotional material to recipients located within and outside New York State have a substantial amount of promotional advertising printed on both the front and back sides. Petitioner contends that because of the promotional information on the envelopes, the envelopes are promotional material, the primary function of such being to promote and advertise Petitioner's products. The promotional advertising depicted on the envelopes is designed to induce sales and to encourage recipients to investigate the contents. Petitioner states that 80% of the cost of the envelopes is attributable to the promotional information printed thereon.

Petitioner concludes that the "promotional covers" are exempt from full taxation because such items are not purchased for resale, the use of such items is restricted to being assembled with other tangible property which is delivered to a location outside New York State for use outside the state, and such items are promotional materials which Petitioner sends free of charge to customers outside New York State.

Section 1119 of the Tax Law states:

(a) Subject to the conditions and limitations provided for herein, a refund or credit shall be allowed for a tax paid pursuant to subdivision (a) of section eleven hundred five or section eleven ten

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(4) on the sale or use within this state of tangible personal property, not purchased for resale, if the use of such property in this state is restricted to fabricating such property (including incorporating it into or assembling it with other tangible personal property), processing, printing or imprinting such property and such property is then shipped to a point outside this state for use outside this state... (Emphasis added)

Section 1105(a) of the Tax Law imposes a sales tax on "the receipts from every retail sale of tangible personal property...." Section 1110 of the Tax Law imposes a use tax on the use of tangible personal property in this State by a person who purchased the same while a resident of New York, but who did not pay tax on the purchase.

Form ST-152 (5/77), Collection and Reporting Instructions for Printers and Mailers, states in part as follows: "Note: ... Outside mailing envelopes 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." (Emphasis added) Re Publishers Clearing House, Advisory Op St Tax Comm, January 14, 1983, TSB-A-83(1)S.

While Petitioner's use of the "promotional covers" prior to mailing them through a New York Post Office under certain circumstances might fall within the provisions of Section 1119(a)(4) of the Tax Law, the actual act of mailing the "promotional covers" through a New York Post Office constitutes a use which does not fall within the restricted uses required by the statute. Therefore, in those instances where Petitioner employs the "promotional covers" for the purpose of mailing printed matter (advertising materials) through a New York Post Office, Petitioner is considered to be using the promotional covers within New York State.

Moreover, whereas Petitioner's mailing of the "promotional covers" is through a New York Post Office, use of such "promotional covers" is deemed to occur by Petitioner within New York State rather than occurring by the recipient at the mailing destination. Accordingly, Petitioner's purchase and subsequent use of the "promotional covers" are precluded from the exemption provided under Section 1119(a)(4) of the Tax Law. Petitioner is liable for sales or use tax based on the total cost of the "promotional covers" to Petitioner.

However, it is noted that effective September 1, 1989 Section 1101(b) of the Tax Law has been amended to include a new paragraph 12 which includes in the definition of promotional materials "Any advertising literature, other related tangible personal property (whether or not personalized by the recipient's name or other information uniquely related to such person) and envelopes used exclusively to deliver the same." (Emphasis added).

Section 1115 of the Tax Law has also been amended to include a new subdivision (n)(1) whereby effective September 1, 1989 "Promotional materials mailed, shipped or otherwise distributed from a point within the state, by or on behalf of vendors or other persons to their customers or prospective customers located outside this state for use outside this state shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten of this article."

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Therefore, "promotional covers" which Petitioner uses to mail promotional material to customers or prospective customers located outside New York State will be exempt from state and local sales and use tax when such mailings occur on or after September 1, 1989.

DATED: July 17, 1989

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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