

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

TSB-A-93 (67) S
Sales Tax
December 29, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S930927A

On September 27, 1993 a Petition for Advisory Opinion was received from Linda Kavanagh, 40 Fulton Avenue, Garden City Park, New York 11040-5106.

The issue raised by Petitioner, Linda Kavanagh, is whether certain services performed by a taxpayer about to begin a process serving business in New York will be subject to sales tax.

The taxpayer will be conducting a process serving business. In addition to process serving, Petitioner will provide the following services:

- 1) Research and retrieval of legal documents from federal, state and municipal court records.
- 2) Photocopying documents.
- 3) Transmittal by facsimile machine (Fax) of copies of documents from court records to clients.
- 4) Delivery of photocopies.

The documents will include complaints, legal proceedings, motion papers, etc. Each document is of a uniquely personal and individual nature and for a specific case, without trends, patterns or generic material. The documents will not be altered or analyzed in any way by the taxpayer, will not be issued with a cover letter or report and will not be published by the taxpayer or issued in reports furnished to the taxpayer's clients. The taxpayer will provide the service of finding the documents, photocopying them and sending them to the taxpayer's clients, the majority of whom will be law firms. The charges for the research and retrieval will be separately stated on the taxpayer's billings.

The taxpayer will list the photocopy charge and fax charges separately on the bill to the client. Delivery of the photocopies will be to various points within and outside of New York State.

There will be different types of delivery services that will be provided by the taxpayer.

- a.) It will deliver photocopies of documents retrieved described above to its client.
- b.) It will pick up documents at a client's office, file the originals of these documents at court and deliver a receipted copy of the filing to the client.

- c.) It will deliver an affidavit prepared by the taxpayer as a component of the process serving charge.

The taxpayer will separately state in its billings the type of service rendered, whether it is process serving, delivery of photocopies of court documents, or research and retrieval services.

Section 1105(a) of the Tax Law imposes a tax upon "[T]he receipts from every retail sale of tangible personal property . . ."

Section 1101(b)(3) of the Tax Law defines a receipt as:

"The amount of the sale price of any property and the charge for any service taxable under this article, valued in money, whether received in money or otherwise, including any charges by the vendor to the purchaser for shipping or delivery regardless of whether such charges are separately stated in the written contract, if any, or on the bill rendered to such purchaser and regardless of whether such shipping or delivery is provided by such vendor or a third party . ." (Emphasis supplied)

Section 1105(b) of the Tax Law imposes a tax upon the "[r]eceipts from every sale of telephony and telegraphy and telephone and telegraph service .

Section 527.2(d)(2) of the Sales and Use Tax Regulations states that:

(2) The term telephony and telegraphy includes use or operation of any apparatus for transmission of sound, sound reproduction or coded or other signals.

* * *

Example 4: Facsimile transmission services are telegraph services subject to the tax imposed under section 1105(b) of the Tax Law.

* * *

Section 1105 of the Tax Law does not impose tax upon the process-serving service to be provided by the taxpayer. The Fax charges will be subject to sales tax in accordance with Section 1105(b) of the Tax Law and Section 527.2(d)(2) of the Sales and Use Tax Regulations. The taxpayer's charges for Photocopies and delivery thereof will be subject to sales tax in accordance with Section 1105(a) and 1101(b)(3) of the Tax Law when they are delivered to a point within New York State. The research and retrieval of legal documents from federal, state and municipal court records will be subject to sales tax under Section 1105(c)(1) of the Tax Law.

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It should be noted that delivery charges are taxable only where the tangible personal property or service sold is subject to tax. Thus, picking up of documents, filing copies and obtaining a receipted copy of such, and delivering affidavits in connection with process serving will not be subject to tax.

DATED: December 29, 1993

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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