

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

TSB-A-96 (84) S
Sales Tax
December 26, 1996

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S941017B

On October 17, 1994, a Petition for Advisory Opinion was received from Garry T. Center, CPA, 1721 Central Avenue, Albany, New York 12205.

The issues raised by Petitioner, Garry T. Center, are whether Petitioner's client's receipts from the sale to customers of various trade show services enumerated herein are subject to State and local sales taxes.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner's client (hereafter referred to as "A") operates a business located in New York State which provides "turn-key" trade show services for various customers. "A's" business operation consists of designing, fabricating, renting, shipping and storing of exhibits and displays for use in trade shows. Additionally, "A" provides project management services relating to trade shows and provides rentals of portables, furniture and accessories for use with exhibits and displays. Occasionally, "A" will sell an exhibit or display to a customer.

"A's" customers are located in and outside of New York State. Trade shows also occur in and outside of New York State, including trade shows in foreign countries.

"A's" trade show services are further described as follows:

1. Design Services Performed at "A's" New York State Graphic design; production layouts for the purpose of producing a final printed piece, photographically generated piece or computer generated piece; scale floor plans and elevations; and production drawings for the purpose of fabricating a finished product.
2. Construction/Fabrication Performed at "A's" New York State Location. In-house building, fabricating, and assembly of exhibits and displays for the purpose of trade show participation throughout the world.
3. Exhibit Rentals for "A's" Various Customers at the Trade Show Location. Rentals of custom designed exhibits, displays, portables, furniture, and accessories.
4. Project Management Services planned at "A's" New York State Location and Executed at the Trade Show Location. Coordination and management

of events relating to trade show participation including: budgeting, estimating, research, space or exhibit reservations, ordering trade show site services, on-site installation and dismantling, and supervision.

5. Shipping to and from Trade Show Locations. Shipping of exhibits and display materials from the production facility to locations throughout the world, and the subsequent return of the exhibits and displays.

6. Storage at "A's" New York State Location. Warehousing and storage of exhibits and displays in New York State. Exhibits and displays are stored for more than 30 days.

Applicable Law and Regulations

Section 1101(b) of the Tax Law states, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(3) Receipt. The amount of the sale price of any property and the charge for any service taxable under this article ... and also 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

(4) Retail sale. (i) A sale of tangible personal property to any person for any purpose

(5) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume ... for a consideration

(6) Tangible personal property. Corporeal personal property of any nature

Section 1105 of the Tax Law imposes sales tax, in part, upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

* * *

(c) The receipts from every sale, except for resale, of the following services:

* * *

(3) Installing tangible personal property ... or maintaining, servicing or repairing tangible personal property ... not held for sale in the regular course of business ... and whether or not any tangible personal property is transferred in conjunction therewith

(4) Storing all tangible personal property not held for sale in the regular course of business

Section 525.2(a)(3) of the Sales and Use Tax Regulations provides:

The sales tax is a "destination tax," that is, the point of delivery or point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate.

Section 526.5 of the regulations states, in part:

(a) Definition. The word receipt means the amount of the sale price of any property and the charge for any service taxable under articles 28 and 29 of the Tax Law, valued in money, whether received in money or otherwise. The following subdivisions of this section discuss elements of a receipt.

* * *

(e) Expenses. All expenses, including telephone and telegraph and other service charges, incurred by a vendor in making a sale, regardless of their taxable status and regardless of whether they are billed to a customer are not deductible from the receipts.

* * *

(g) Shipping or delivery. (1) Shipping or delivery charges by a vendor to its customer for the cost of transporting tangible personal property to the customer are part of the vendor's receipt subject to tax where the sale of the property is subject to tax or where taxable services were performed on the property. This is so regardless of whether the vendor separately states such charges in a written contract or on an invoice and regardless of whether the vendor ships or delivers the property itself or hires a third party to ship or deliver the property. Similarly, charges by a vendor to its customer for picking up the customer's property upon which the vendor is to perform taxable services are part of the vendor's receipt from the sale of the service subject to tax.

Section 526.7(e) of the regulations provides:

(e) Transfer of possession. (1) Except as otherwise provided in paragraph (3) of this subdivision, a sale is taxable at the place where the tangible personal property or service is delivered, or the point at which possession is transferred by the vendor to the purchaser or his designee.

Opinion

"A's" trade show services of designing, fabricating and shipping of exhibits and displays to and from trade show locations culminate in "A" renting and occasionally selling exhibits or displays to its customers. Since a rental is included within the definition of "sale, selling or purchase," under Section 1101(b)(5) of the Tax Law, "A" is considered to be making retail sales of tangible personal property pursuant to Section 1101(b)(4) of the Tax Law. "A's" charges to customers for design, fabrication and shipping services are considered to be expenses incurred by "A" in providing tangible personal property to its customers. These expenses are part of the total charge to the customer for the rental or occasional sale of an exhibit or display and are therefore considered to be part of the total receipt from the sale of tangible personal property. Under the provisions of Section 526.5 of the Sales and Use Tax Regulations, such expenses are not deductible from the taxable receipts.

Accordingly, "A" is liable for collecting and remitting State and local sales taxes on the total receipts, including shipping charges, from its rentals and occasional sales of exhibits and displays, portables, furniture and accessories in any transaction where delivery of the tangible personal property occurs within New York State, regardless of whether the customers' business locations are in or outside of New York State.

However, when delivery of the tangible personal property occurs outside New York State, the total receipts from the rentals and sales of the exhibits, displays, portables, furniture and accessories are not subject to State or local sales taxes as provided under Sections 525.2(a)(3) and 526.7(e) of the regulations, regardless of the customers' business locations.

The receipts from "A's" charges to customers for storage services are subject to the tax imposed under Section 1105(c)(4) of the Tax Law since the storage services are provided at "A's" storage facility located in New York State.

Section 1105(c) of the Tax Law imposes tax on receipts from the sale of certain enumerated services. To the extent that "A" charges its customers separately for its project management services and to the extent that the listed components of these services (e.g., budgeting, estimating, etc.) may be individually purchased by customers, with the exception of on-site installations, these services are not included among the enumerated services that are subject to tax. Accordingly, if separately charged and available for sale, only the receipts from the sale of the on-site installations that are

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delivered in New York State are subject to sales tax (Tax Law, § 1105(c)(3)). If not separately charged and available for sale, the project management services are considered incidental to "A's" rentals and occasional sales of exhibits, displays, portables, furniture and accessories and are subject to State and local sales taxes as previously described.

DATED: December 26, 1996

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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