

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

TSB-A-97(12)S
Sales Tax

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940928A

On September 28, 1994, the Department of Taxation and Finance received a Petition for Advisory Opinion from Morton L. Coren, P.C., 638 Meadow Court, Westbury, NY 11590-5925.

The issues raised by Petitioner, Morton L. Coren, P.C., are:

1. Whether the following provided by Petitioner's client are subject to State and local sales and use taxes:
 - a. Sorting of large print jobs of printed material by computer in zip code order for mailing purposes
 - b. Printing letters (including cost of letterhead and envelopes)
 - c. Printing address labels
 - d. Affixing address labels
 - e. Folding letters and inserting in envelopes
 - f. Sealing envelopes
 - g. Affixing postage or metering mail
 - h. Sorting the envelopes for mailing
 - i. Bagging and mailing letters
 - j. Postage
2. Whether Petitioner's client must collect sales tax, if any, on its entire charge or only the taxable services separately stated on the invoice.
3. Whether the rate of tax to be collected, if any, is determined by the point of mailing or the destination of the mailing.
4. Whether Petitioner's client can purchase paper, envelopes and ink for resale.

- 5. Whether Petitioner's client can purchase computer equipment and software used to print notices and letters for its customers under the manufacturing exemption.

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

Petitioner represents a client who is engaged in business in New York. Petitioner's client prints and mails specialized notices and letters and charges its customers a fixed fee for each letter printed and mailed. The contents of these notices and letters are composed by the customers of Petitioner's client. Petitioner's client only prints and mails these materials.

Petitioner's client receives information (form letters, names, addresses, etc.) either by telephony or from magnetic tape. Petitioner's client corrects any errors in the information such as errors in zip codes which would result in improperly sorted envelopes for mailing. Petitioner's client prepares the letters and sorts them in order to obtain the minimum postage rates. The letters primarily say that a customer account is overdue and that payment should be remitted immediately. There is no advertising and promotional material sent with the billing and notices. Payments are not sent to Petitioner's client. Petitioner's client has no information as to customer account balances. The letter is inserted into an envelope with a reply envelope. The letters are then prepared for mailing by affixing postage, preparing and filing United States Postal Service forms and delivering the mail to the post office. All mailings are done from New York post offices. The letters sent out of New York are sent directly to individuals. None of the letters are sent out in bulk.

Computer equipment and software are used 80% of the time to produce the aforementioned notices and letters.

Applicable Law and Regulations

Section 1101(b) (4) of the Tax Law defines the term "retail sale", in part, to mean "(i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property . . . "

Section 1105 of the Tax Law imposes sales tax 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:

* * *

(2) Producing, fabricating, processing, printing or imprinting tangible personal property, performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale, upon which such services are performed.

Section 1115(a)(12) of the Tax Law exempts, in part, machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property for sale.

Section 1132(c) of the Tax Law states, 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 receipt 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
....

Section 525.2(a)(3) of the Sales and Use Tax Regulations provides that "[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."

Section 526.6 of the Sales and Use Tax Regulations provides, in part, as follows:

(a) The term "retail sale" or "sale at retail" means the sale of tangible personal property to any person for any purpose except as specifically excluded.

* * *

(c) Resale exclusion. (1) Where a person, in the course of business operations, purchases tangible personal property or services which he intends to sell, either in the form in which purchased, or as a component part of other property or services, the property or services which he has purchased will be considered as purchased for resale and therefore not subject to tax until he has transferred the property to his customer.

Section 528.13 of the Sales and Use Tax Regulations provides, in part, as follows:

(a) Exemption. (1) Exemption from statewide tax. An exemption is allowed from the tax imposed under subdivision (a) and (c) of section 1105 of the Tax Law, and from the compensating use tax under section 1110 of the Tax Law, for receipts from sales of the following:

(i) Machinery or equipment (including parts with a useful life of more than one year) used or consumed directly and predominantly in the production for sale of tangible personal property.

* * *

(c) Directly and predominantly. (1) "Directly means the machinery or equipment must, during the production phase of a process,

(i) act upon or effect a change in material to form the product to be sold, or

(ii) have an active causal relationship in the production of the product to be sold, or

(iii) be used in the handling, storage, or conveyance of materials or the product to be sold, or

(iv) be used to place the product to be sold in the package in which it will enter the stream of commerce.

* * *

(4) Machinery or equipment is used predominantly in production, if over 50 percent of its use is directly in the production phase of a process.

Opinion

In George Silver, Adv Op St Tx Comm, April 24, 1986, TSB-A-86(15)S, the Tax Commission held that the petitioner's charges for the services of folding written or printed matter, inserting it in envelopes, sealing, affixing stamps or metering and mailing, and the cost of postage are not subject to sales tax if segregated from the taxable receipts on the customer's bill. Moreover, the exempt services may be combined in a single amount under the designation "non-taxable mailing." However, the petitioner's receipts from the sale of outside envelopes and address labels, including its services of imprinting and affixing labels on the envelopes were subject to the sales tax in effect at the point of mailing.

In Skyview Graphics, Inc., Adv Op St Tx Comm, December 4, 1986, TSB-A-86(51)S, the Tax Commission held that services of gluing address labels to material to be mailed, gluing on seals to media or mailing envelopes, gluing on circular seals to self sealing envelopes in lieu of normal envelope sealing, imprinting customer marketing codes on reply cards, and imprinting indicia on inserts (i.e., imprint legend "bulk fees paid", "postage permit #", etc.) are subject to State and local sales and use taxes. Additionally, however, the

petitioner's services of machine or hand affixing U.S. postage stamps to mailing envelopes, running envelopes through postage meters using either customer's or Petitioner's postage, inserting printed matter into mailing envelopes, zip code sorting inserted pieces, bagging and mailing and packing printed matter into cartons to be shipped by common carrier were not services subject to State and local sales and use taxes.

Publication 842 (12/93) New York State and Local Sales Tax Information for Printers provides at pages 19 through 21 a detailed listing of tangible personal property and services and the taxability of such property and services commonly sold by printers. Among the property and services listed, computer services of printing letters, labels, etc., printing of envelopes, printing of address labels, and printing of stationery are subject to sales and use taxes unless sold for resale, sold to an exempt organization, delivered outside New York State or are exempt promotional material. Moreover, as provided at pages 23, 24 and 25, ingredients or components which become part of the product to be sold, computers used directly and predominantly for typesetting and/or other production operations, paper stock and printing ink which are components of the printed matter to be sold may be purchased without the payment of sales tax.

Accordingly, with respect to issue "1", pursuant to Sections 1101(b)(4) and 1105(a) of the Tax Law, Section 526.6 of the Sales and Use Tax Regulations, George Silver, supra, Skyview Graphics, Inc., supra, and Publication 842, Petitioner's client's services listed as items (a), (e), (f), (g), (h), (i) and (j) are not subject to State or local sales and use taxes. However, items (b), (c), and (d) are subject to State and local sales and use tax. Petitioner's client's charges for printing letters mailed to addresses outside of New York State are not taxable, if these charges are separately stated.

Concerning issue "2", pursuant to George Silver, supra, if the charges are separately stated on the customer's invoice, then sales tax need only be collected on the taxable receipts. In addition, exempt services may be combined in a single amount under the designation of "non-taxable mailing" where the invoice includes an itemized list of the exempt services provided.

With respect to issue "3", pursuant to Section 525.2(a)(3) of the Sales and Use Tax Regulations, printed material mailed by Petitioner's client to its customers or 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 at the location from which they are mailed as their use occurs in New York State, even though all or a portion of the contents may be subject to tax based on mailing destination. (See Publishers Clearing House, Adv Op St Tx Comm, January 14, 1983, TSB-A-83(1)S.)

Regarding issue "4", pursuant to Sections 1101(b)(4), 1105(a) and 1132(c) of the Tax Law, Section 526.6 of the Sales and Use Tax Regulations, and Publication 842, Petitioner's client's purchases of paper, envelopes and ink may be purchased for resale to the extent that they become a part of the product to be sold.

TSB-A-97(12)S
Sales Tax

Concerning issue "5", since Petitioner's client's computer equipment and software are used 80% of the time to produce the printed notices and letters for sale, pursuant to Sections 1105(a) and 1115(a)(12) of the Tax Law, Section 528.13 of the Sales and Use Tax Regulations and Publication 842, the machinery and equipment are held for use or consumption directly and predominantly in the production of tangible personal property for sale. Therefore, the computer equipment and software may be purchased by Petitioner's client exempt from sales and use taxes.

DATED: March 6, 1997

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

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