

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

TSB-A-98(39)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S971231E

On December 31, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from Price Chopper Operating Co., Inc., P.O. Box 1074, Schenectady, New York, 12301.

The issue raised by Petitioner, Price Chopper Operating Co., Inc., is whether the purchase of blank "Advantage" shopper discount cards qualifies for the exemption for promotional materials.

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

Petitioner operates a retail grocery chain throughout upstate New York. Upon application, Petitioner mails to its customers a Price Chopper Advantage membership card. This card allows customers to take advantage of grocery discounts, cash checks in Petitioner's stores and rent videos.

The plastic membership card is purchased from an outside vendor. The cards purchased from the vendor are embossed with Petitioner's logo and the "AdvantEdge" title on the front, and are otherwise in finished form, except for the omission of the customer's name and magnetic computer identification strip. Upon receipt of the cards from the vendor, Petitioner imprints the customer's name and encodes the card with a magnetic strip for computer identification. Once completed, these cards are mailed via U.S. mail to Petitioner's customers.

Applicable Law and Regulations

Section 1101(b)(12) of the Tax Law defines promotional materials as:

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. Such other related tangible personal property includes, but is not limited to, free gifts, complimentary maps or other items given to travel club members, applications, order forms, and return envelopes with respect to such advertising literature, annual reports, promotional displays and Cheshire labels but does not include invoices, statements and the like.

Section 1105(a) of the Tax Law imposes sales tax on the receipts from every retail sale of tangible personal property, except as otherwise provided.

Section 1115(n) of the Tax Law provides, in part:

(1) Except as otherwise provided in this subdivision, 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 section eleven hundred ten of this article.

* * *

(4) Notwithstanding any contrary provisions of paragraph one of this subdivision, promotional materials which are printed materials and promotional materials upon which services described in paragraph two of subdivision (c) of section eleven hundred five have been directly performed shall be exempt from tax under this article where the purchaser of such materials mails or ships such promotional materials, or causes such promotional materials to be mailed or shipped to its customers or prospective customers, without charge to such customers or prospective customers, by means of common carrier, United States postal service or like delivery service.

Opinion

Purchases of tangible personal property, such as the plastic cards described above, used by Petitioner to produce the Advantage shopper membership cards, do not qualify for the exemption available under Section 1115(n) of the Tax Law for promotional materials delivered in the state. The plastic cards are purchased from an outside vendor, and are used by Petitioner to produce cards which may be used by its customers as a discount card or an identification card for cashing checks or for renting videos. Since Petitioner is purchasing the plastic cards at retail, and is not purchasing promotional materials, these purchases are taxable under Section 1105(a) of the Tax Law.

DATED: July 1, 1998

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

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