

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

TSB-A-99(15)S
Sales Tax
March 3, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S980209B

On February 9, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from the Town of Islip Republican Committee, 39 Third Avenue, Bay Shore, New York 11706.

The issue raised by Petitioner, Town of Islip Republican Committee, is whether the word "customer" as used in subdivisions (1) and (4) of Section 1115(n) of the Tax Law, includes "constituents" of a political party.

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

Petitioner is a political committee and purchases printed promotional material and delivers it to constituents by common carrier, U.S. Postal Service or a like delivery service. The printed material might take the form of bumper stickers, post cards, signs, etc.

Applicable Law

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

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

(1) 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 imposed under subdivision (a) of section eleven hundred five and the compensating use tax 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 promotional 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 its customers or prospective customers, by means of a common carrier, United States postal service or like delivery service.

Section 1131 of the Tax Law provides, in part:

Definitions.--When used in this Part IV,

* * *

(2) "Customer" shall include: every purchaser of tangible personal property or services; every patron paying or liable for the payment of any amusement charge; and every occupant of a room or rooms in a hotel.

Section 526.12 of the Sales and Use Tax Regulations provides:

Customer. (Tax Law, § 1131(2)) The term customer includes:

- (a) Every person who purchases tangible personal property.
- (b) Every person who purchases services.
- (c) Every person who purchases food and drink subject to tax under section 1105(d) of the Tax Law.
- (d) Every person who is a patron paying or liable for the payment of any admission charge or charge of roof garden or cabaret.
- (e) Every person who is a member of a social or athletic club, organization or association which charges dues.
- (f) Every person who is the occupant of a room or rooms in a hotel.

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Opinion

The issue presented by Petitioner is whether the term "customer" as used in Section 1115(n)(1) and (4) of the Tax Law includes the constituents to whom it sends the political advertising. Webster's Collegiate Dictionary defines "customer" as "one that purchases a commodity or service." The Tax Law defines customer much the same as the dictionaries. Section 1131(2) of the Tax Law and Section 526.12 of the Sales and Use Tax Regulations define customer as one who purchases tangible personal property or services, pays an amusement charge or pays for hotel occupancy. The term customer would not encompass the recipients of the political advertising, who are not purchasers or potential purchasers. Accordingly, the printed materials Petitioner delivers to the constituents are not exempt from sales and compensating use tax under Section 1115(n)(1) and (4).

DATED: March 3, 1999

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

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