

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

TSB-H-81 (51) S
Sales Tax
April 14, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S801125A

On November 25, 1980 a Petition for Advisory Opinion was received from D.L. Terwilliger Co. Inc., 215 E. 22nd Street, New York, New York 10010.

The issue raised is whether Petitioner is liable for sales tax on the purchase of plates and negatives for use in filling orders for printed matter. The period involved is December, 1975 through May 1980, with respect to which period Petitioner is presently under audit.

According to Petitioner's statement of facts, the items in question are purchased at the direction of the customer and remain the property of the customer at all times. The cost of the plates and negatives is incorporated into the selling price of the order and sales tax is charged wherever applicable. The sales tax charged to customers reflects the selling price of the plates and negatives to the customer. A mark-up on cost is added just as in the case of any of the integral components of the completed order. Petitioner goes on to state that "In many cases, the plates, negatives, etc. are shipped to the customer with the job or separately. At other times the customer instructs us to hold the plates, negatives, etc. in our shop for his convenience in order to facilitate the reprinting of any job. The Petitioner has at all times resold the plates, negatives, etc. by computing their cost and mark-up into the charge billed to our customer and everything changes title and ownership at time of completion and billing." Attached to the petition are "samples of purchase orders by our major customers."

Section 1105(a) of the Tax Law, contained in Article 28, imposes the State sales tax on "The receipts from every retail sale of tangible personal property, except as otherwise provided in this article." A tax identical to this is imposed with respect to New York City under section 1107 of the Tax Law, and with respect to many localities, pursuant to Article 29 of the Tax Law. Section 1115(a)(12) of the Tax Law, also contained in Article 28, exempts from the operation of the State sales tax receipts from the sale of "Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property...for sale, by manufacturing...." An exemption with respect to tangible personal property so used in production is also applicable to locally imposed sales taxes, except for New York City's. Tax Law, §1210(a)(1). The plates and negatives purchased by Petitioner come within this exemption, inasmuch as they constitute "equipment" put to the described use, and the receipts from such sales are therefore exempt from State and local sales taxes, except for New York City's. In order to enjoy this exemption Petitioner must furnish its suppliers with a completed Exempt Use Certificate (Form ST-121).

Petitioner contends that its purchases constitute purchases for resale. If so, the receipts from such sales would not be subject to New York City's sales tax (or, for that matter, State & local sales taxes). This consequence arises from the definition of "retail sales" (the receipts from which are subject to the New York City sales tax imposed under section 1107 of the Tax Law) as "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...." Tax Law, §1101(b)(4). The purchase of negatives and plates by a printer for a job would be considered to be a purchase for resale, the receipts from which would thus be exempt from the New York City sales tax, only where the printer and the

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customer enter into a written agreement whereby the printer is to purchase the plates and negatives to be resold to the customer prior to any use by the printer, and where title to the plates and negatives is to vest in the customer on delivery at the place of business of the printer. See in this regard Commissioner's opinion of December 15, 1969, incorporated in Technical Services Bureau Memorandum TSB-M-79(7)S. Petitioner's statement of facts indicates that title to the plates and negatives vests in the customer not "on delivery at the place of business of the printer", but "at time of completion and billing." This is not contradicted by the provisions of the various purchase orders submitted by Petitioner. Indeed, nowhere do these provisions call for a purchase of plates and negatives by Petitioner, whether for resale to its customer or otherwise. Rather, the applicable provisions, in several instances at least, refer explicitly to plates made or prepared, and not purchased, by Petitioner. In addition, the provisions in question do not specify the time of passage of title. Accordingly, inasmuch as the conditions set forth above have not been met, Petitioner's purchases do not constitute purchases for resale within the meaning and intent of section 1101(b)(4) of the Tax Law. Hence, the receipts from such sales are subject to New York City's sales tax.

DATED: February 24, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau