

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-01(13)S
Sales Tax
April 17, 2001

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S001030B

On October 30, 2000, the Department of Taxation and Finance received a Petition for Advisory Opinion from Comark Corporate Sales, Inc., Attn: Tax Dept., 444 Scott Drive, Bloomingdale, IL 60108.

The issue raised by Petitioner, Comark Corporate Sales, Inc., is whether charges made by Petitioner for travel expenses incurred in the performance of its services are subject to sales tax.

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

Petitioner provides computer related services to a New York client. Petitioner's employees performing these services travel to New York from out of state. Due to the travel distance involved, Petitioner's employees are required to stay overnight. A written contract between Petitioner and its client states that the client will reimburse Petitioner for all reasonable travel expenses. These expenses include airline tickets, taxi service, hotel accommodations and meals. Receipts of more than \$25.00 are retained by Petitioner's employees to substantiate the expenses. A per diem allowance is given for meals. Petitioner pays all sales taxes on the travel expenses at the time they are incurred.

Petitioner's bill to its client includes two charges. One is a fee for services rendered and the other is for the amount of travel expenses incurred in conjunction with such services, rounded to the nearest dollar. These two charges appear on the same invoice in order for the client to be able to match the expenses with the services charged. Sales tax is charged on the service portion of the invoice. Sales tax is not charged on the travel reimbursement portion of the invoice.

As part of its Petition, Petitioner submitted a copy of the contract with its client which indicates, in Item 7, that the client will reimburse Petitioner for all "reasonable travel and related business expenses" incurred by Petitioner in the performance of its services. Item 2 of the contract indicates that Petitioner "will act as an independent contractor" in the performance of its duties. Also submitted as part of the Petition is an invoice, including back-up documentation, for services rendered and travel expenses incurred by Petitioner on one of its projects.

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 . . . valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts 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. . . . (Emphasis added)

Section 1105(c) of the Tax Law imposes sales tax upon the receipts from every sale, except for resale, of certain enumerated services. (Emphasis added)

Section 526.5(e) of the Sales and Use Tax Regulations provides, in part:

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.

Example 1: A photographer contracts with a customer to furnish photographs at \$50 each in addition to expenses.

The customer is billed as follows:	
Photographs(2)	\$100
Model fees	60
Meals	10
Travel	25
Props(Flowers)	<u>5</u>
Total due	\$200
Receipt subject to tax is \$200	

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Opinion

Petitioner provides computer related services to a client located in New York State. The client reimburses Petitioner for certain travel expense items which Petitioner incurs in traveling to New York to perform its services. Submitted with the Petition is a billing invoice showing two separate charges, one for the services performed by Petitioner and one for the total of all associated travel expenses, including sales tax, paid by Petitioner.

Petitioner is deemed to have consumed the travel expense items as a cost of doing business, and they are characterized as items of overhead. Therefore, all reimbursed expenses including air fare, hotel and meals incurred by Petitioner and included in its charges to its client are included in the definition of "receipt" provided in Section 1101(b)(3) of the Tax Law. See Matter of Penfold v. State Tax Commn., 114 AD2d 696. Charges to Petitioner's client for reimbursed expenses carry the same tax consequences as the services they are provided in conjunction with. Accordingly, the charge to Petitioner's client for reimbursed travel items, including the tax paid by Petitioner on its purchase of such items, is part of the receipt from the sale of services by Petitioner, and is subject to sales tax provided that the receipt from Petitioner's sale of services is subject to tax. If Petitioner makes a nontaxable sale, the amount charged to its client, including such reimbursed expenses, is not subject to tax. See Salomon & Leitgeb, CPA's, LLP, Adv Op Comm T&F, July 23, 1997, TSB-97(44)S.

It is noted that the contract between Petitioner and its client stipulates that Petitioner is an independent contractor in the performance of its duties. Therefore, Petitioner is not making purchases on behalf of its client and there is no agency relationship between the two parties. See ARASERVE, Inc., Adv Op Comm T&F, September 27, 1990, TSB-A-90(97)S.

DATED: April 17, 2001

/s/
Jonathan Pessen
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Technical Services Division

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