

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division

TSB-A-07(17)S
Sales Tax
June 26, 2007

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S031124A

On November 24, 2003, the Department of Taxation and Finance received a Petition for Advisory Opinion from Creative Staging Services, Inc., Building 1, Suite 5, Rotterdam Industrial Park, Schenectady, NY 12306.

The issue raised by Petitioner, Creative Staging Services, Inc., is whether charges to its customers for labor provided with the event services described below are subject to New York State sales tax.

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

Petitioner is an event-management organization providing the necessary audio, visual, and computer equipment for clients to conduct events, such as shareholders' meetings, management conferences, security analyst meetings, and numerous special events. Petitioner provides the planning, design, and labor required to implement an audiovisual presentation. Petitioner incurs costs for labor to help set up, operate, and disassemble its audio, visual, and computer equipment, stages, lighting, and decor used in such events.

The labor Petitioner provides includes teamsters, electricians, carpenters, and stagehands. Petitioner provides services primarily in the United States and at times at international locations. Petitioner contracts for labor, and the cost varies depending on where services are provided. Petitioner's clients often request breakdowns on Petitioner's invoices of fees, equipment rentals, and labor.

Sample invoices submitted by Petitioner show charges separated into several categories: "Equipment Rental," "Labor," "Travel & Living," and "Equipment Transportation." Within the Equipment Rental category, charges are detailed for various types of audio, video, lighting, staging, and computer equipment and tents. The Labor category includes preproduction and on-site production coordinators; audio, video, computer, and lighting operators; graphic artists; videographers; and local labor, also listed as stagehand or set up/strike/tear down crew. The category of Travel & Living includes expenses for hotels, per diems, gratuities, train travel, taxis, and parking. Equipment Transportation refers to charges for transporting the equipment to the job site. The services described above were detailed on the sample invoices, and in each instance, the charges for equipment provided represented the major portion of the charges to the client.

Applicable law and regulations

Section 1101(b) of the Tax Law provides, 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 . . . 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. . . .

* * *

(5) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume . . . for a consideration. . . .

(6) Tangible personal property. Corporeal personal property of any nature. . . .

Section 1105 of the Tax Law imposes sales tax, in part, 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:

* * *

(3) Installing tangible personal property . . . or maintaining, servicing or repairing tangible personal property . . . not held for sale in the regular course of business . . . and whether or not any tangible personal property is transferred in conjunction therewith. . . .

* * *

(7) Interior decorating and designing services, (whether or not in conjunction with the sale of tangible personal property), by whomsoever performed, including interior decorators and designers, architects or engineers; . . .

Section 525.2(a)(3) of the Sales and Use Tax Regulations provides:

Except as specifically provided otherwise, the sales tax is a "destination tax." The point of delivery or point at which possession is transferred by the vendor to the purchaser, or the purchaser's designee, controls both the tax incidence and the tax rate.

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

(a) Definition. The word *receipt* means the amount of the sale price of any property and the charge for any service taxable under articles 28 and 29 of the Tax Law, valued in money, whether received in money or otherwise. The following subdivisions of this section discuss elements of a receipt.

* * *

(e) 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.

* * *

(g) Shipping or delivery. (1) Shipping or delivery charges by a vendor to its customer for the cost of transporting tangible personal property to the customer are part of the vendor's receipt subject to tax where the sale of the property is subject to tax or where taxable services were performed on the property. This is so regardless of whether the vendor separately states such charges in a written contract or on an invoice and regardless of whether the vendor ships or delivers the property itself or hires a third party to ship or deliver the property. Similarly, charges by a vendor to its customer for picking up the customer's property upon which the vendor is to perform taxable services are part of the vendor's receipt from the sale of the service subject to tax.

Section 526.7(e) of the Sales and Use Tax Regulations provides, in part:

Transfer of possession. (1) Except as otherwise provided in paragraph (3) of this subdivision, a sale is taxable at the place where the tangible personal

property or service is delivered, or the point at which possession is transferred by the vendor to the purchaser or his designee.

* * *

(6) When a lease of equipment includes the services of an operator, possession is deemed to be transferred where the lessee has the right to direct and control the use of the equipment. The operator's wages, when separately stated, are excludible from the receipt of the lease, provided they reflect prevailing wage rates.

Section 527.1(b) of the Sales and Use Tax Regulations provides, in part:

Taxable and exempt items sold as a single unit. When tangible personal property, composed of taxable and exempt items is sold as a single unit, the tax shall be collected on the total price.

Section 527.5(a) of the Sales and Use Tax Regulations provides, in part:

Imposition. (1) The tax is imposed on receipts from every sale of the services of installing, maintaining, servicing or repairing tangible personal property, by any means including coin-operated machines, whether or not any tangible personal property is transferred in conjunction with the services.

(2) Installing means setting up tangible personal property or putting it in place for use.

Opinion

Petitioner provides all necessary audio and visual equipment, lighting, staging, tents, and computer equipment for clients to conduct various events. Petitioner plans and designs an event's equipment needs, rents the equipment needed, and provides the labor necessary to implement the plans. Petitioner's invoices to its clients individually itemize the equipment rentals and services provided.

Rentals are included within the definition of "sale, selling or purchase," under section 1101(b)(5) of the Tax Law. Therefore, rentals by Petitioner of audio and visual equipment, lighting, staging, tents, and computer equipment are considered sales of tangible personal property and are subject to tax under section 1105(a) of the Tax Law. Petitioner's charges to customers for transportation or delivery of the equipment are part of the total receipt from the rental of the tangible personal property. Under the provisions of section 1101(b)(3) of the Tax Law and section 526.5 of the Sales and Use Tax Regulations, shipping or delivery charges are part of the receipt. However, the receipts from rental of equipment are subject to State and local sales tax when the equipment is delivered to a location within New York State. If the equipment

is delivered to a location outside New York State, the receipts from the rental are not subject to New York State or local sales tax. See sections 525.2(a)(3) and 526.7(e) of the Sales and Use Tax Regulations.

Petitioner may provide, at an additional charge, the services of an operator in conjunction with its equipment rentals. This service is not one of the enumerated services subject to tax. Therefore, the charge for this service is not subject to tax as long as it is separately stated and reasonable (for example, the charge reflects prevailing wage rates). See section 526.7(e)(6) of the Sales and Use Tax Regulations.

The service of setting up (installing) equipment is a taxable service under section 1105(c)(3) of the Tax Law. However, the service of dismantling equipment is not an enumerated service subject to sales tax under section 1105(c) of the Tax Law. When tangible personal property composed of taxable and exempt items is sold as a single unit, the sales tax must be collected on the total price (see section 527.1(b) of the Sales and Use Tax Regulations). This rule applies to sales of taxable and exempt services and sales of services with tangible personal property. See *PricewaterhouseCoopers LLP*, Adv Op Comm T&F, March 25, 2003, TSB-A-03(11)S; *Salomon & Leitgeb CPA's, LLP*, Adv Op Comm T&F, July 23, 1997, TSB-A-97(44)S. Therefore, Petitioner's single charge to a customer for setting up and dismantling equipment is subject to tax.

Petitioner bills its clients for preproduction planning the use and placement of the audio and visual equipment needed for a presentation at an event. These services are not among the enumerated services that are subject to sales tax under section 1105(c) of the Tax Law. Petitioner separately states the charge for this service. If this service may be purchased from Petitioner separately from the rental of the equipment and if the charge is separately stated and reasonable, the charge is not subject to tax. Therefore, if Petitioner's customers may purchase the preproduction planning service without also renting the equipment, the charges for the separate sales of preproduction services are not subject to tax, if separately stated and reasonable.

Another element of Petitioner's event services involves selecting and designing the decor for the event. To the extent Petitioner's services relating to the decor go beyond the rental and installation of the materials and involve selecting the decor or designing the layout of the decor, such services constitute interior decorating and design services which are subject to New York State and local sales taxes pursuant to section 1105(c)(7) of the Tax Law. See *Landmark Event Services, Inc.*, Adv Op Comm T & F, September 3, 2003, TSB-A-03(35)S. Assuming separate sales of such services, separately stated charges for the provision of interior decorating and design services delivered in New York City are not subject to the local New York City sales tax. See Technical Services Bureau Memorandum, entitled *Repeal of New York City's Sales Tax on Interior Decorating and Design Services*, December 1, 1995, TSB-M-95(13)S.

Petitioner bills clients for travel and living expenses; e.g., hotels, gratuities, train travel, taxis, and parking. These items are expenses incurred by Petitioner in performing its services

and not services sold by Petitioner to its clients. If these expenses are incurred by Petitioner in providing taxable services or property, the reimbursement Petitioner receives from its customers for these expenses is part of the total receipt from the sale of taxable property and services. See section 1101(b)(3) of the Tax Law. If these expenses are incurred by Petitioner in providing nontaxable services or property, the reimbursement Petitioner receives from its customers for these expenses is not subject to sales tax. If a single charge is made for an expense item that is incurred by Petitioner in providing both taxable and nontaxable services or property, the reimbursement Petitioner receives from its customers for such expense is subject to tax.

DATED: June 26, 2007

/s/
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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.