

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

TSB-A-82(15)S
Sales Tax
May 3, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810921B

On September 21, 1981 a Petition for Advisory Opinion was received from The Lawyers Co-operative Publishing Company, Aqueduct Building, Rochester, New York 14694.

Petitioner is in the business of publishing a wide variety of legal reference works and, in addition, providing a computer-based legal citation service. The issue raised herein is whether its purchase and use of publications utilized in such business constitute purchases and uses subject to the sales and compensating use taxes imposed under Article 28 of the Tax Law or authorized under Article 29 thereof.

Petitioner states that its business consists of researching various statutes, regulations and court and agency decisions, and disseminating the results of such research to the legal community. To accomplish this task, Petitioner purchases certain published materials, including statutes, legislative reports, court reports, administrative regulations, periodicals and the like. These materials are thereupon analyzed, organized and interpreted by Petitioner's staff. The results of this research are then made available to the legal community in the form of published books (regularly supplemented by newsletters and advance sheets), newsletters, advance sheets, specialized reports, texts, encyclopedic publications, official court reports and codes for certain states, and an electronic computer data base containing complete citations and histories for reported opinions. Petitioner's publications are made available on both single item and subscription bases.

Petitioner asserts that the materials it purchases are exempt from sales and compensating use taxes on any of four alternative bases. First, it is claimed that the materials purchased constitute component parts of the product it sells. Second, it is urged that the purchased materials are akin to exempt research materials. Third, Petitioner argues that the subject purchases constitute purchases of information services for resale. Finally, it is contended that the materials in question constitute supplies used in production. Petitioner cites in support of its position: (1) the exemption applicable to the sale of information services to newspapers and radio or television broadcasters set forth at 20 NYCRR 527.3(b)(4); (2) the general exclusion applicable to information services purchased for resale, as described at 20 NYCRR 527.3(b)(1); (3) the exemption applicable to the sale of tangible personal property purchased for use in research and development, as described at 20 NYCRR 528.11; and, (4) an opinion of counsel of March 10, 1967, which held certain property used in making films to constitute exempt production equipment.

Section 1105(a) of the Tax Law imposes the State sales tax on the receipts from retail sales of tangible personal property. The term "retail sale" is defined, in relevant part, as a sale made for any purpose other than "(A) for resale as such or as a physical component part of tangible personal property or (B)," insofar as relevant herein, for use by the purchaser in providing any of certain taxable services, including the service of the "furnishing of information by printed, mimeographed or multigraphed matter," where "the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax." Tax Law, §1101(b)(4)(i). Receipts from the furnishing of such information service are subject to tax, except where purchased for resale (or where personal or individual in nature). Tax Law, §1105(c)(1).

Section 1115(a)(10) of the Tax Law provides for an exemption from sales tax with respect to receipts from sales of the following:

"Tangible personal property purchased for use or consumption directly and predominantly in research and development in the experimental or laboratory sense. Such research and development shall not be deemed to include . . . research in connection with literary, historical or similar projects."

Section 1105-B of the Tax Law provide an exemption from sales tax with respect to supplies purchased ". . . for use or consumption directly and predominantly in the production of tangible personal property . . . for sale, by manufacturing. . . ."

Petitioner's first contention is that the purchased materials constitute component parts of the products sold. Insofar as the items in question may constitute tangible personal property, rather than a taxable information service, the resale exclusion is not applicable because the items purchased are resold neither "as such" nor as "a physical component part of tangible personal property." Tax Law, §1101(b)(4)(i)(A). Nor, it may be added, would the exclusion contained in Tax Law, §1101(b)(4)(i)(B) apply because, assuming Petitioner to be providing a taxable information service, the items purchased would not be "actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax."

Petitioner's second contention is that the items purchased are exempt as research materials. As indicated above, the statutory exemption applicable to property used in research and development refers solely to property used in research and development "in the experimental or laboratory sense," a sense manifestly inapplicable to Petitioner's activity. Indeed, such activity is in fact described by the statutory exclusion from such exemption provision of "research in connection with literary, historical or similar projects." Tax Law, §1105(a)(10). Cf., 20 NYCRR 528.11(b)(1).

Petitioner next contends that its purchases represent purchases of information services for resale. Section 1105(c) of the Tax Law, which imposes the State sales tax on the sale of certain information services, excludes from such imposition the purchases of such information services "for resale." Tax Law, §1105(c). The meaning of this phrase is elucidated in a provision of the Sales and Use Tax Regulations, as follows:

"The purchase of a service subject to tax under section 1105(c)(1) of the Tax Law by a vendor who will resell that service as such or as a part of a service also subject to tax under section 1105(c)(1) is not a purchase at retail and is exempt from the sales tax.

Example 3: A vendor of an investment advisory service purchases a commodity information service and a stock market information service. Both services purchased by the vendor are incorporated into the service he sells. The vendor may purchase the services he uses for resale without payment of sales tax." 20 NYCRR 527.3(c)(3).

Assuming, arguendo, that Petitioner's purchases are of taxable information services and that the sale of its products constitutes the rendering of taxable information services, Petitioner's purchases would not constitute purchases of information services "for resale," within the meaning of section 1105(c)(1) of the Tax Law. The resale exclusion contained therein is applicable to information purchased solely for resale "as such" or as "a part" of a taxable information service. It is clear that the purchased information services are not purchased for resale "as such." Nor are they purchased solely for resale as a part of a taxable information service. Resale as a part of an information service refers to the instance where the embodiment of the purchased information service (e.g., a list, a compilation, or a description of facts) is reproduced in whole or significant part in the "printed, mimeographed or multigraphed matter" transferred to the customer. It is not sufficient that information derived from the purchased information service be reflected in the second information service, as in the present case where Petitioner has the information acquired by it "analyzed, organized and interpreted" in order to produce, inter alia, legal texts, encyclopedias, procedural guides, and the like. If in certain instances information derived from the purchased information services are in fact reprinted in full or significant part in an information service produced by Petitioner, the exclusion would nonetheless remain inapplicable because such use would constitute only one of the several uses to which the purchased information is put, rather than its sole use. It may be added here that Petitioner's citation of 20 NYCRR 527.3(b)(4) is not germane to the present matter, inasmuch as the exemption there described is, as set forth in section 1105(c)(1) of the Tax Law, applicable only to "information services used by newspapers, radio broadcasters and television broadcasters in the collection and dissemination of news." Petitioner has not established, nor even contended, that any of its products constitutes a newspaper, nor that Petitioner itself is a radio or television broadcaster.

Petitioner contends, finally, that its purchases are of supplies used in production, and consequently exempt from tax pursuant to section 1105-B of the Tax Law. Such exemption provision, quoted supra, is applicable, insofar as it may pertain to the present instance, only to property used "directly" in the production of tangible personal property for sale by manufacturing. According to Petitioner's description, the purchased publications in question are utilized for research (i.e., they are "analyzed, organized and interpreted") which is designed to enable Petitioner to produce various legal publications. The term "producing" is defined in the Sales and Use Tax

TSB-A-82(15)S
Sales Tax
May 3, 1982

Regulations as "the manufacture of a product from raw materials and any process in which raw materials . . . [lose their] identity when the production process is completed." 20 NYCRR 527.4(b). The term "manufacturing" is defined in the Sales and Use Tax Regulations as "the production of tangible personal property that has a different identity from its ingredients." 20 NYCRR 531.2(b). The production or manufacturing process engaged in by Petitioner is that involving the transformation of raw materials such as paper and ink into completed publications. The research in which the publications purchased by Petitioner, and at issue herein, are utilized is but the preamble to such production. While admittedly necessary to Petitioner's business, the items used in research are not used "directly" in the process of converting raw materials into a finished product. They are thus not "directly" used in the production of tangible personal property for sale and accordingly do not enjoy the exemption provided for under section 1105-B of the Tax Law. This conclusion is in accord with, and warranted by, Matter of Mohawk Power Corp. v. Wanamaker, 288 App. Div. 446, aff'd 2 NY 2d 764. Finally, the opinion of counsel cited by Petitioner in this regard compels no conclusion contrary to that expressed herein.

It is to be noted that while Petitioner's purchases are here found to be generally subject to tax, the Tax Law does provide for an exemption with respect to all purchases of "newspapers and periodicals." Tax Law, §1115(a)(5). The criteria for exemption under such statutory provision are set forth in section 528.6 of the Sales and Use Tax Regulations.

DATED: April 15, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau