

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

TSB-A-82(39)S
Sales Tax
October 28, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S820210A

On February 10, 1982 a Petition for Advisory Opinion was received from Delta Design, Ltd. d/b/a Designers, II, 691 Walt Whitman Road, Melville, New York 11746.

Petitioner inquires as to its Sales Tax obligations with respect to two contracts. In the first instance, Petitioner contracts to publish a magazine or sports program for an exempt organization. In the second instance, Petitioner contracts to publish a magazine or sports program for a corporation which is acting on behalf of an exempt organization. Such corporation solicits funds on behalf of the exempt organization and uses these funds to pay Petitioner. In this second case, Petitioner's contract is with the corporation rather than with the exempt organization. In each case Petitioner purchases materials and services necessary to the fulfillment of its contract.

Section 1105(a) of the Tax Law imposes a tax on "the receipts from every retail sale of tangible personal property, except as otherwise provided in this article." The term "retail sale" is defined, in relevant part, in section 1101(b)(4) 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. . . ." Accordingly, those items purchased by Petitioner which are resold to its customer, such as the paper and ink incorporated into the product so sold, are subject to the resale exclusion described above, and the receipts from such sales are not subject to tax. In order to avail itself of the benefit of this exclusion, Petitioner should provide its suppliers with a properly completed Resale Certificate (Form ST-120). The resale exclusion here described is similarly applicable to Petitioner's purchases of services, such as printing, utilized in producing the final product sold to its customer.

Further, the receipts from Petitioner's purchases of machinery, equipment, tools and supplies used predominantly in the production of the product sold to its customer are exempt from tax pursuant to Tax Law, §§ 1105-B and 1115(a)(12). (It may be noted that such exemption provisions are not applicable to the New York City sales tax, imposed under section 1107 of the Tax Law) This exemption would apply to such items as artwork, illustrations, layouts, drawings, paintings, mechanicals, overlays, designs, photographs and paste-ups. See Technical Services Bureau Memorandum TSB-M-79(7.1)S. To avail itself of the benefits of the exemption Petitioner should present its supplier with a properly completed Exempt Use Certificate (Form ST-121).

The foregoing considerations are applicable to both of the contracts described by Petitioner. In addition, where the publication sold constitutes a "newspaper or periodical," the receipts from the sale thereof would, under either contract, be exempt from tax pursuant to section 1115(a)(15) of the Tax Law.

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(The Sales and Use Tax Regulations set forth the applicable definition of the terms "newspaper" and "periodical." See 20 NYCRR 528.6.) However, where the publication does not constitute a newspaper or periodical, the sales tax implications of the sales by Petitioner to its customers would be as follows. Where Petitioner's customer is an organization described in section 1116(a)(4) of the Tax Law, (viz., any of various "exempt" organizations) the receipts from sales made directly to such organization would be exempt from tax pursuant to the terms of such statutory exemption provision. To make sales on such an exempt basis, Petitioner must be provided with a copy of the customer's Exempt Organization Certificate (form ST-119.1). The same result would arise from sales made to an intermediary corporation acting as agent for the exempt organization. For the requirements which must be met in order to establish a purchase as constituting a purchase by an agent for another, see Technical Services Bureau Memorandum TSB-M-78(3)S. Sales made to an entity which is not itself exempt under section 1116 of the Tax Law, nor acting as agent for such an organization, would be subject to tax under section 1105(a) of the Tax Law. An exception to this rule would arise, however, where the intermediary corporation purchased the printed materials for resale to the exempt organization, and supplied Petitioner with a properly completed Resale Certificate.

DATED: October 13, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau