

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

TSB-A-83(17)S
Sales Tax
March 28, 1983

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S820614A

On June 14, 1982 a Petition for Advisory Opinion was received from North American Precise Syndicate, Inc., 201 East 42nd Street, New York, New York 10017.

The issues raised are:

1. Whether Petitioner is required to pay New York State sales and use taxes on purchases of artwork, silkscreens, engraving, composition, printing and supplies, photography and other materials for use in producing booklets which are delivered to Petitioner's clients' designees located outside New York State.
2. Whether charges to Petitioner, by an out-of-state clipping service, for clippings delivered to Petitioner's New York State location, are subject to State and local sales or use tax.
3. Whether Petitioner's charges to clients, who are charitable organizations and qualify for exemption from sales tax, are subject to State and local sales tax.

Petitioner creates booklets containing informational material which present its clients to the public in a favorable light. The booklets are paid for by Petitioner's clients and, in accordance with their instructions, are delivered to newspaper editors at various locations throughout the country. Based on the form in which the booklets are prepared, an editor of a newspaper may tear out a particular item and use the tear-out as a master for the duplicating process used in printing the newspaper. Petitioner states that its purchases of personal property and services which it uses to produce the booklets are purchases of property and services which are incorporated in or used to produce tangible personal property for sale.

As part of the services which Petitioner renders to its clients, Petitioner furnishes such clients with actual clippings of the items which appear in the various newspaper and periodicals. To accomplish this, Petitioner retains the services of a clipping service located outside New York State. The clipping service cuts out the items and forwards them to Petitioner who then sorts the items and forwards them to the appropriate clients.

Among Petitioner's clients are various charitable organizations located within and without New York State. Petitioner contends that these organizations are exempt from sales tax and that, thus, Petitioner's charges to them should not be subject to New York State sales and use tax.

Issue 1:

Section 526.6 of the Sales and Use Tax Regulations provides, in part as follows: "Retail sale. (Tax Law §1101(b)(4)). (a) The term 'retail sale' or 'sale at retail' means the sale of tangible personal property to any person for any purpose except as specifically excluded . . . (c) Resale exclusion. (1) Where a person, in the course of his business operations, purchases tangible personal property or services which he intends to sell, either in the form in which purchased, or as a component part of other property or services, the property or services which he has purchased will be considered as purchased for resale and therefore not subject to tax until he has transferred the property to his customer . . . (2) A sale for resale will be recognized only if the vendor receives a properly completed resale certificate . . . (3) Receipts from the sale of property purchased under a resale certificate are not subject to tax at the time of purchase by the person who will resell the property. The receipts are subject to tax at the time of the retail sale."

Section 528.13 of the Sales and Use Tax Regulations provides, in part as follows: "Machinery and Equipment Used in Production . . . - (Tax Law, §1115(a)(12)). (a) Exemption. (1) An exemption is allowed from the tax imposed under section 1105(a) of the Tax Law, and from the compensating use tax imposed under section 1110 of the Tax Law, for receipts from sales of:

(i) Machinery or equipment used or consumed directly and predominantly in the production for sale of tangible personal property . . . by manufacturing, processing . . .

. . . .

(4) There is no exemption from the tax imposed in New York City under section 1107 of the Tax Law, for machinery, equipment or other tangible personal property used or consumed in production . . .

(5) An Exempt Use Certificate (Form ST-121) is used to make purchases eligible for this exemption without payment of sales tax."

The exemption described in the above-quoted regulation has been extended to cover not only machinery and equipment, but all tangible personal property used as described. (Tax Law, Section 1105-B.)

Because Petitioner produces booklets which it sells to its clients, Petitioner is considered to be manufacturing tangible personal property for sale. Accordingly, Petitioner's purchases of artwork, silkscreens, engravings, composition, photography, as well as other materials and supplies which are used in the production phase of its finished product may be purchased tax exempt under the provisions of Section 1105-B and 1115(a)(12) of the Tax Law, provided Petitioner furnishes its supplier with a properly completed Exempt Use Certificate, Form ST-121. The purchases of such items will be exempt from the statewide sales tax, the Metropolitan Commuter Transportation District Tax and all local sales taxes, but will be subject to the New York City sales tax of 4%. Petitioner's purchases of services such as printing, and of items which are transferred to the clients as actual physical component parts of the finished booklet, are considered to be purchases for resale and may be made tax exempt provided Petitioner furnishes his supplier with a properly completed Resale Certificate, Form ST-120.

Petitioner's sales of the booklets are considered to be sales of tangible personal property and the total charge to its clients will be subject to New York State and local sales taxes based upon the point of delivery where Petitioner sends the booklets to editors within New York State. However, to the extent deliveries of the booklets are made to locations outside New York State, receipts from the sale of such booklets will be exempt from New York State and local sales taxes.

Issue 2:

Section 527.3 of the Sales and Use Tax Regulations provides, in part, as follows: "Sale of Information Services. - (Tax Law §1105(c)(1)). (a) Imposition. (1) Section 1105(c)(1) of the Tax Law imposes a tax on the receipts from the service of furnishing information (2) The collecting, compiling or analyzing information of any kind or nature and the furnishing reports thereof to other persons is an information service (b) Exclusions (1) Sales tax does not apply to receipts from sales of information services which are for resale as such. (2) The sales tax does not apply to the receipts from the sale of information which is personal or individual in nature and which is not or may not be substantially incorporated into reports furnished to other persons by the person who has collected, compiled or analyzed such information

Example 4: A firm is in the business of reading newspapers and periodicals, cutting out all articles in which the name of the customer or a topic of interest to the customer appear, and transferring such clippings to the customer, whether by mail or otherwise, for a fee. This is a service of furnishing information which is taxable. The tax is due on the entire charge regardless of the method of billing for the service except that any separately stated charge for postage or other delivery is not subject to tax. Even though this information may be individual in nature, it may be incorporated in reports furnished to others."

Because Petitioner takes delivery of the various items from the clipping service and, after sorting them, forwards them to its clients, Petitioner is considered to be purchasing a taxable information service for resale purposes. Accordingly, the charges to Petitioner by the clipping service will be tax exempt provided Petitioner furnishes the clipping service with a properly completed Form ST-120, Resale Certificate. When Petitioner delivers the items to its clients, the charge to Petitioner's clients will be subject to New York State and local sales taxes if delivery occurs within New York State, but will be exempt from State and local sales taxes if delivery occurs outside New York State.

Issue 3:

Section 529.7(h) of the Sales and Use Tax Regulations provides, in part, that: "Sales to exempt organizations. (i) Any sale or amusement charge to or any use or occupancy by an exempt organization to which an exempt organization certificate has been issued is exempt from sales and use tax. (2) In order to exercise its right to exemption the organization must be the direct purchaser, occupant or patron of record. It must also be the direct payer of record and must furnish its vendors with a properly completed exempt organization certification Direct payer of record means that direct payment is made by the organization or from its funds"

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Accordingly, Petitioner's charge to a charitable organization will be exempt from sales tax provided the charitable organization issues Petitioner a properly completed Exempt Organization Certification, Form ST-119.1, and the charitable organization is the direct purchaser and direct payer of record. If the charitable organization does not fulfill all of the above requirements, charges for booklets and clipping services delivered to locations in New York State will be subject to New York State and local sales taxes.

DATED: March 11, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau