

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

TSB-A-84(6)S
Sales Tax
March 6, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S831205B

On December 5, 1983 a petition for advisory opinion was received from Linen N Things, Inc., 1650 William Street, Buffalo, New York 14206.

The issue raised is whether section 1101(b)(3) of the Tax Law excludes from the definition of "receipt" separately stated shipping/handling charges collected by the taxpayer from the purchaser, where the taxpayer is engaged in the sale of merchandise by party plan, and where the charge is a flat amount intended to cover the cost of transporting the products from the taxpayer's place of business to the purchaser, either by direct delivery to the purchaser's residence or by delivery to the hostess of the party who in turn either delivers the merchandise to the purchaser, or arranges for the purchaser to pick up the merchandise.

Petitioner is in the business of selling linens and other tangible personal property through a party plan under which Petitioner sends out demonstrators to attend parties organized by hostesses at which the demonstrators show off various goods. An order is placed for the goods and Petitioner then orders the goods from the manufacturer, who ships the goods to Petitioner's place of business. Petitioner then transports the goods to the purchaser's residence or, more commonly, to the hostess, who either delivers the merchandise to the purchaser or arranges for the merchandise to be picked up by the purchaser.

The cost of transportation for shipping the goods from the manufacturer to Petitioner is included as part of the sales price for the merchandise. A separate shipping/handling charge of \$.99 is imposed by Petitioner for delivery of the goods from Petitioner's place of business to the hostess or the purchaser. The same \$.99 shipping/handling charge is imposed regardless of the size or weight of the order or the distance shipped and regardless of the actual costs of shipment.

The separate statement of the \$.99 charge does not indicate which portion of the charge represents "shipping" and which portion represents "handling".

Section 1101(b)(3) of the tax law defines the term "receipt" as:

"The amount of the sale price of any property and the charge for any service taxable under this article, valued in money...without any deductions for expenses...and excluding the cost of transportation of tangible personal property sold at retail where such cost is separately stated in the written contract if any, and on the bill rendered to the purchaser." (Emphasis added)

Regulation 526.5(g)(3) provides that transportation charges shall be deemed to be separately stated if they can be computed from information appearing on the bill.

TSB-A-84(6)S
Sales Tax
March 6, 1984

Regulation 526.5(g)(4) provides that to qualify for the exclusion, transportation charges must be reasonable in relation to prevailing established rates.

Accordingly, since the \$.99 shipping and handling charge bears no relation to actual transportation costs and since petitioner did not separately state the portion of the charge which constitutes transportation charges to its customers, the entire receipt is taxable under section 1105(a) of the Tax Law. Lillian Vernon Corporation, State Tax Commission, October 22, 1982, TSB-H-82(148)S).

DATED: February 16, 1984

s/FRANK J. PUCCIA
Director
Technical Services Bureau