

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

TSB-A-90 (30.1)S
Sales Tax
October 10, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S890914A

This modifies an Advisory Opinion issued on May 31, 1990 to Crushing Enterprises, Inc., 157 West 57th Street, New York, New York 10019.

The purpose of this modification is to revise a statement in the final paragraph of the original advisory opinion wherein it was stated in part "...tangible personal property may be in the form of ... a finished written score...", by deleting the words "a finished written score" from such statement.

The original advisory opinion is to also be modified to reflect that an original handwritten or original typewritten lead sheet or musical score constitutes a manuscript and as such is considered to be intangible personal property.

In this context, the original advisory opinion is expanded as follows:

Section 1101(b)(3) of the Tax Law defines receipt as "[T]he amount of the sale price of any property and the charge for any service taxable. . .without any deduction for expenses. . . ."

Section 526.5(e) of the Sales and Use Tax Regulations explains the above section of law as follows:

(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.

Example 1: A photographer contracts with a customer to furnish photographs at \$50 each in addition to expenses. The customer is billed as follows:

Photographs (2)	\$100
Model fees	60
Meals	10
Travel	25
Props (Flowers)	<u>5</u>
Total Due	\$200

Receipt subject to tax is \$200

Example 2: An appliance repairman charges \$10 per hour plus expenses when on a service call. The customer is billed as follows:

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3 hrs. at \$10	\$ 30
Travel	15
Parts	20
Meals	<u>5</u>
Total Due	\$ 70
Receipt subject to tax is \$70	

Section 526.8 of the Sales and Use Tax Regulations states, in part:

Tangible Personal Property (Tax Law, §1101[b][6])

(a) Definition.... tangible personal property means corporeal personal property of any nature having a material existence and perceptibility to the human senses...

(c) Tangible personal property does not include:

(2) intangible personal property

The effect of Section 1101(b)(3) is to treat as a single sale any sale in which any of the components cannot be singly purchased. Thus, even though the components of a particular sale can be separately stated, calculated or estimated, if they cannot be separately purchased, the combination of the items listed must be considered as one. Penfold v. State Tax Commission, 114 AD 2d 696 (1985).

In a transaction where the customer accepts Petitioner's jingle, and exercises an option to purchase the copyright rights to the jingle by receipt of an original manuscript in the form of a lead sheet, musical score or arrangement, the demo fee, creative fee and production fee, if any, will be considered as receipts from a single transaction in which the transfer of title to and possession of tangible personal property occurs, if such tangible personal property transferred to the customer is in the form of a broadcast quality tape and is transferred pursuant to a contract or agreement whereby the customer does not have an option of electing whether to produce its own broadcast quality tape or to have the broadcast quality tape produced by Petitioner or by an unrelated third party. Accordingly, the total receipts in such transaction will be subject to the tax imposed under Section 1105(a) of the Tax Law.

In a transaction where the customer accepts Petitioner's jingle, exercises an option to purchase the copyright rights to the jingle through receipt of an original manuscript in the form of a lead sheet, musical score or arrangement and takes delivery of a broadcast quality tape pursuant to a contract or agreement whereby the customer has the option of electing whether to produce its own broadcast quality tape or to have the broadcast quality tape produced by Petitioner or by a third party and whereby the sale of the lead sheet, musical score or arrangement is not contingent upon the sale of the broadcast quality tape or vice versa, the portion of the separately stated receipts from the charges for the demo fee, production fee and any portion of the creative fee which is applicable to the broadcast quality tape will be considered receipts from the sale of tangible personal property

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and subject to the tax imposed under Section 1105(a) of the Tax Law. However, as the original handwritten or typewritten lead sheet, musical score or arrangement is a manuscript and considered to be intangible personal property and therefore not considered to be tangible personal property under the provision of Section 526.8(c) of the Sales and Use Tax Regulations, the portion of the separately stated receipts from the creative fee applicable thereto will not be subject to the tax imposed on the sale of tangible personal property under Section 1105(a) of the Tax Law.

It is noted that if the demo fee and creative fee are paid pursuant to a contract which is separate from the contract for the production of a broadcast quality tape, the demo fee and the creative fee will not be subject to state or local sales tax.

DATED: October 10, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.