

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

TSB-A-90 (33)S
Sales Tax
June 29, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S900312B

On March 12, 1990 a Petition For Advisory Opinion was received from Morton L. Coren, P.C., 638 Meadow Court, Westbury, New York 11590.

The issue raised by Petitioner, Morton L. Coren, P.C., is whether the sale of certain tangible personal property and services rendered by Petitioner's client, a behavioral scientist, are subject to the sales tax.

Petitioner's client, a behavioral scientist, conducts interviews with employees of his customers and develops strategies for training his customers' employees. He then prepares oral and/or written reports and discusses his recommendations with his customers. He may also prepare scripts for the production of video tapes. The only material supplied by him to his customers under these circumstances are the typewritten reports and scripts. These reports are personal and individual in nature and are not substantially incorporated in reports furnished to other persons.

In addition to the consulting services described above the behavioral scientist produces video tapes for sale to his customers. The tapes are used for training employees in selling techniques, customer service and other matters. The cost of producing the tapes includes both professional and production services including consultation with his customers.

Section 1105(c)(1) of the Tax Law imposes sales tax upon

"The furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons...."

Therefore the sale of the behavioral scientist's reports, which are personal and individual in nature and are not substantially incorporated in reports furnished to other persons, are not subject to sales tax in accordance with Section 1105(c)(1) of the Tax Law. The sale of his scripts do not come within the scope of the Sales Tax Law and are thus not subject to tax.

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 explain 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:

3 hrs. at \$10	\$ 30
Travel	15
Parts	20
Meals	<u>5</u>
Total due	\$ 70

Receipt subject to tax is \$70

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). Accordingly, the behavioral scientist must collect sales tax on his entire charge for tapes which are delivered into New York State including any portion of such charges for the tapes which represent the charges for consulting services that were performed in connection with the preparation of the tapes.

However in the event the consulting services, including the typewritten reports and scripts, are supplied and billed pursuant to a separate contract or agreement apart from the contract or agreement for the sale of the tapes, then the charges for such consulting services will not be subject to sales tax although the charges for the tapes will be subject to said tax.

DATED: June 29, 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.