

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

TSB-A-91 (66)S
Sales Tax
October 11, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910829A

On August 29, 1991, a Petition for Advisory Opinion was received from Dolan and Dolan, Box D, Newton, NJ 07860-0106.

The issue raised by Petitioner, Dolan and Dolan, is whether revenues from the sale of advertising space in its client's shopper directory is subject to sales tax.

Petitioner's client is an entity formed under the laws of the State of New Jersey and maintains its principal office for business within the State of New York. Petitioner's client's sole source of income is derived from the sale of advertising space in a discount shoppers directory which it publishes at several intervals throughout the course of the year. The directory itself is distributed free by Petitioner's client to various corporations which furnish it to their employees as part of their employee benefits program. There is no charge made for the distribution of the directory or on account of sales made by advertisers to directory users. The sole source of income derives from the actual sale of the advertising space within the various directories and all of these sales are consummated at Petitioner's client's home office within the State of New York.

Section 1105(c)(1) of the Tax Law imposes sales tax on certain information services, but excludes the sale of the services of advertising from said tax.

Section 527.3(b)(5) of the Sales and Use Tax Regulations provides that:

(5) Fees for the services of advertising agencies or other persons acting in a representative capacity are excluded from the tax. Advertising services consist of consultation and development of advertising campaigns, and placement of advertisements with the media without the transfer of tangible personal property. The furnishing of a personal report containing information derived from information services, by an advertising agency, to its client for a fee is not a taxable information service. However, if an advertising agency is engaged only for the purpose of conducting a survey or if a survey is separately authorized and billed to the customer, the taxability of such survey is determined in accordance with the provisions of subdivision (a) of this section and the other provisions of this subdivision. Sales of tangible personal property such as layouts, printing plates, catalogs mailing devices or promotional handouts, tapes or films by an advertising agency for its own account are taxable sales of tangible personal property.

In Stillman Advertising, Inc., Adv Op Comm T&F, May 26, 1988, TSB-A-88(30)S the Commissioner advised that an advertising agency's total fee, whether or not itemized on the billing to the client, for producing an advertisement and placing it in a printed medium, without the transfer of tangible personal property to the client, is an exempt advertising charge as defined in Regulation

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527.3, supra. The operation of the exemption is not dependent on the selected publication's taxability or method of distribution, nor is it material whether or not the publication is for sale.

Accordingly, pursuant to Section 1105(c)(1) of the Tax Law, Section 527.3(b)(5) of the Sales and Use Tax Regulations and Stillman Advertising, Inc. supra, the sale of advertising space by Petitioner's client in its shopper directory is not subject to sales and use tax.

DATED: October 11, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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