

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

TSB-A-81(26)S  
Sales Tax  
September 24, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810521A

On May 21, 1981, a Petition for Advisory Opinion was received from Spiegel, Inc., 1515 West 22nd Street, Oak Brook, Illinois 60521.

The issue raised is whether or not a mail order business located outside New York State is required to register as a vendor and collect and remit sales and compensating use taxes.

Petitioner, Spiegel, Inc., is a mail order business located outside New York State. Petitioner maintains no place of business, has no employees, salesmen, independent contractors, promotion men, missionary men, service representatives, agents or other representatives in New York State. Petitioner solicits sales from potential customers solely by distribution of catalogs. Customers' orders for merchandise are received by telephone or mail. Mail orders are accepted in Illinois, and telephone orders in Pennsylvania. All orders for merchandise are filled from Petitioner's warehouse in Illinois and deliveries are made by common carrier or mail. Petitioner does not engage in the servicing of merchandise sold.

Petitioner has several tiers of subsidiaries, none of which maintain a places of business in New York State. Petitioner is a subsidiary of Beneficial Corporation whose activities are wholly unrelated to those of Petitioner.

The Sales and Use Tax Regulations provide the following definitions of "vendor", applicable herein:

"A person making sales to his customers within the State, who has solicited such sales by the interstate distribution of catalogs or other advertising material by mail and who delivers the merchandise through the mail or by common carrier, and who neither maintains a place of business as defined in subdivision (c) of this section, nor solicits business as defined in subdivision (d) of this section, is not required to register as a vendor. However, if such person registers voluntarily, he is under the same obligations as any other vendor." 20 NYCRR 526.10(e) (2).

"A vendor shall be considered to maintain a place of business in the State if he, either directly or through a subsidiary, has a store, salesroom, sample room, showroom, distribution center, warehouse, service center, factory, credit and collection office, administrative office or research facility in the State." 20 NYCRR 526.10(c).

"(1) A person is deemed to be soliciting business if he has employees, salesman, independent contractors, promotion men, missionary men, service representatives or agents soliciting potential customers in the State."

TSB-A-81(26)S  
Sales Tax  
September 24, 1981

"(2) A person is deemed to be soliciting business in New York if he distributes catalogs or other advertising material, in any manner in the State.

"(3) A person is deemed to be soliciting business if he places advertisements in New York newspapers or over New York radio or television stations, and either requests that orders, payments or inquiries be sent to a New York address or delivers orders to New York in vehicles that he controls." 20 NYCRR 526.10(d).

Petitioner solicits sales in New York solely by the interstate distribution of catalogs by mail. Petitioner delivers merchandise to New York customers by common carrier or mail. Neither Petitioner nor its subsidiaries maintain offices or facilities of any kind in New York. Petitioner, therefore, does not maintain a place of business in New York within the meaning of 20 NYCRR 526.10(c). Petitioner does not retain any individuals in New York to solicit customers. Petitioner does not request that orders, payments or inquiries be sent to a New York address. Petitioner, therefore, does not solicit business in New York within the meaning of 20 NYCRR 526.10(d).

It follows from the above that Petitioner is not required to continue to register as a vendor. 20 NYCRR 526.10(e)(2). If Petitioner does not remain registered as a vendor, it will not be a person required to collect tax within the meaning of the Tax Law. Section 1131(1). In such circumstance Petitioner will not be obligated under Section 1132 of the Tax Law to collect sales or compensating use taxes on its sales to New York residents.

DATED: August 31, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau