

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

TSB-A-82(14)S
Sales Tax
April 6, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810924B

On September 24, 1981, a Petition for Advisory Opinion was received from DM Advertising, Inc., 600 Third Avenue, New York, New York 10016.

The issue here raised is whether Petitioner's purchase of photography and artwork used in the construction of mechanicals to be sold, under the circumstances described below, are subject to the sales and compensating use taxes imposed under Article 28 of the Tax Law. It is concluded herein that they are not.

Petitioner is an advertising firm part of whose business consists of providing assistance to clients in the creation of booklets and folders. As part of this process Petitioner creates and provides its clients with mechanicals of two types. In one instance Petitioner purchases artwork and photography which it affixes to the mechanical board, the entire camera-ready mechanical being then transferred to its client. In the second case, Petitioner purchases artwork and photography, photostats of which (in either reduced or enlarged form) are affixed to the mechanical board so as to indicate the proper size and placement of the actual photography and artwork on the ultimate, camera-ready mechanical. Petitioner then transfers to its customer both the prepared mechanical board and the artwork and photography. Possession of the artwork and photography is necessary to enable the client to make proper use of the mechanical, inasmuch as the two are used in conjunction in the final production process.

Section 1105(a) of the Tax Law imposes the State sales tax on the ". . . receipts from every retail sale of tangible personal property" The term "retail sale" is defined, in relevant part, in section 1101(b)(4)(i) of the Tax Law as "A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property" The compensating use tax is imposed on the use within the State of tangible personal property purchased at retail, by a resident of the State, upon which sales tax has not been paid. Tax Law, §1110.

Where Petitioner provides its client with a mechanical part of which consists of artwork and photography purchased by Petitioner it is clear that such items were purchased for resale as physical component parts of tangible personal property sold by Petitioner. Accordingly, the purchase of such artwork and photography would not constitute a retail sale the receipts from which are subject to sales tax, and the use of the same (viz., being attached to the mechanical board) would not be subject to the compensating use tax. Where the mechanicals composed of the photostats are transferred to its client by Petitioner, the same are accompanied by the artwork and photography from which the photostats had been made. In such instance the photography and artwork is sold "as such", and accordingly was purchased by Petitioner "for resale as such."

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The photography and artwork in this instance is not used by Petitioner prior to its sale to the client other than in a manner intended solely to render the photography and artwork themselves the more saleable. It follows that the purchase of photography and artwork in this second instance does not constitute a retail sale the receipts from which are subject to the sales tax, nor does their photostating constitute a use subject to the compensating use tax.

DATED: March 30, 1982

s/GABRIEL DI CERBO
Deputy Director
Technical Services Bureau