

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

TSB-A-82(37)S
Sales Tax
October 27, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810722B

On July 22, 1981 a Petition for Advisory Opinion was received from National Auto Stores Corp., 1821 Broad Street, Utica, New York 13501.

The issue raised is whether Petitioner's purchases of ad slicks are subject to sales tax.

Petitioner prepares layouts of advertisements and sends such layouts to a publishing company. The publishing company sets the type, uses its camera to enlarge or reduce the artwork and prints ad slicks. The ad slicks are then transmitted to Petitioner, which is invoiced for the same. Petitioner mails the ad slicks to various newspapers for the printing of its ads.

Section 1105(a) of the Tax Law imposes a tax on the "receipts from every retail sale of tangible personal property, except as otherwise provided in this article." Such an exemption is provided with respect to machinery and equipment purchased "for use or consumption directly and predominantly in the production of tangible personal property . . . for sale, by manufacturing" Tax Law, §1115(a)(12). Such an exemption is also applicable to the State compensating use tax imposed under section 1110 of the Tax Law, and to the ¼% sales and compensating use taxes imposed in the Metropolitan Commuter Transportation District under section 1109 of the Tax Law. Locally imposed sales taxes, as well as the sales and compensating use taxes imposed under section 1108 of the Tax Law (applicable in Yonkers), exempt the purchase of all "tangible personal property" similarly used or consumed in production. There is no such production exemption applicable to the 4% New York City sales and compensating use taxes imposed under section 1107 of the Tax Law.

Technical Services Bureau Memorandum TSB-M-79(7.1)S provides that artwork, illustrations, layouts, drawings, paintings, mechanicals, overlays, designs, photographs, and paste-ups constitute "machinery and equipment" with the meaning and intent of section 1115(a)(12) of the Tax Law. Such memorandum contains an example, applicable to transactions occurring on and after June 1, 1980, which is applicable to the present matter:

"An advertising agency purchases typography to be used in an advertisement which will be published in a publication which will be sold. Since the typography will be used in producing a publication for sale, the typography is exempt from the statewide tax and any local sales tax outside of New York City. The typography will be subject to the 4% tax imposed in New York City if it is delivered to the purchaser or his agent in New York City or is used in New York City for the purchaser."

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The purchase of ad slicks by Petitioner as here described constitutes the purchase of items falling within the category of "machinery and equipment," inasmuch as the ad slicks will be used to produce an advertisement which will be published in a publication which will be sold. Accordingly, the exemptions described above are applicable to the receipts from the sale of the ad slicks to Petitioner.

In order to avail itself of the production exemption Petitioner must, at the time of purchase, supply its vendor with a properly completed Form ST-121, Exempt Use Certificate. If no such certificate is supplied, Petitioner must pay tax but may subsequently file a claim for refund.

DATED: October 4, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau