

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

TSB-A-83(1)S
Sales Tax
January 31, 1983

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S820419A

On April 19, 1982 a Petition for Advisory Opinion was received from Publishers Clearing House, 382 Channel Drive, Port Washington, New York 11050.

The issue raised is whether certain envelopes used by Petitioner to mail promotional material to recipients outside New York State are subject to New York State Sales or Use Tax when mailed from a New York State location. It is concluded herein that they are so subject to tax.

The envelopes which Petitioner uses to mail promotional material to recipients located outside New York State have promotional advertising printed on both the front and back sides. It is Petitioner's contention that the envelopes are themselves promotional materials and should receive the same sales tax treatment as the promotional material mailed in such envelopes.

Tax Law section 1105(a) imposes a sales tax on "the receipts from every retail sale of tangible personal property . . ." A complementary compensating use tax is imposed, under section 1110 of the Tax Law, on the use of tangible personal property in this State by a person who purchased the same while a resident of New York, but who did not pay tax on the purchase. Section 1119(a)(2) of the Tax Law provides for a refund or credit of tax with respect to "the sale or use of tangible personal property purchased in bulk, or any portion thereof, which is stored and not used by the purchaser or user within this state if that property is subsequently re-shipped by such purchaser or user to a point outside this state for use outside this state, . . ." (Emphasis added)

Form ST-152 (5/77), Collection and Reporting Instructions For Printers and Mailers, states in part as follows: "NOTE: . . . Outside mailing envelopes used to mail printed matter from a point in New York State, through a New York Post Office, are fully taxable as their use occurs in New York State." (Emphasis added)

As the envelopes in question are used by Petitioner to mail printed matter from points within New York State, Petitioner is considered to be using the envelopes within New York State. Accordingly, the above-quoted provisions of section 1119(a)(2) of the Tax Law are not applicable to Petitioner, and sales or use tax is thus due. The fact that the envelopes contain promotional advertising on their front and back has no effect on their sale or use tax status as their primary function is to serve as vehicles for delivery of the promotional printed matter contained in them, and any advertising benefit derived from their use is merely incidental. For this reason, Technical Services Bureau Memorandum TSB-M-79(9)S, cited by Petitioner, is not germane to the matter at hand.

DATED: January 14, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau