

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

TSB-A-85(58)S
Sales Tax
November 14, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S850919A

On September 19, 1985, a Petition for Advisory Opinion was received from Capital District Mailing Co., Inc., 1462 Erie Boulevard, Schenectady, New York 12305.

The issue raised is whether services rendered by Petitioner as a mailing room service business, and the machinery purchased for performing these operations are subject to sales tax.

Petitioner is engaged in the business of providing services for other businesses, either as an on-site mail room or an off-site mail room.

Petitioner's customers provide all materials to be mailed, usually envelopes, inserts and the imprinted mailing labels. The customers also purchase and maintain the mailing lists. Inserts comprise primarily invoices, statements and payment notices and, less frequently, advertising brochures and catalogs. Petitioner's services are limited to collating, folding, inserting, sealing, addressing by pasting on mailing labels, affixing postage by metering, and posting. Charges for these services are based on the number of pieces inserted in the envelopes. Petitioner does not provide fulfillment services.

Petitioner will establish and operate a mail room at the premises of a customer who requests on-site mailing services. In that event Petitioner will purchase the necessary mail room machinery, i.e., folding machines, inserters, addressers, labelers and postage meters for lease to the customer with an option to buy, if Petitioner's services should terminate.

Section 1105(c) of the Tax Law imposes a tax on the receipts from every sale, except for resale, of certain enumerated services including: (2). . . "processing, printing or imprinting tangible personal property, performed for a person who . . . furnishes the tangible personal property, not purchased by him for resale, upon which such services are performed."

With regard to services performed by mailers the Department of Taxation and Finance announced in New York State Tax Bulletin No. 1965-3 its election to follow the provisions of Article 78 of the New York City Rules and Regulations for City sales and compensating use taxes, which state in part that "when performed upon the property of an ultimate customer, the receipts from the services of folding written or printer matter for insertion into envelopes, sealing, affixing stamps, metering and mailing, and the cost of postage, are not subject to the tax if the charges therefor are separately stated on any evidence of sale rendered to the customer. Receipts from addressing envelopes, manually or mechanically are subject to the tax whether or not a separate charge is made therefor."

Accordingly, Petitioner's service of affixing address labels to envelopes is subject to the statewide and appropriate local sales tax in effect at the point from which the actual mailing service occurs. Charges for collating, folding, inserting, sealing and posting are not taxable, if segregated from the taxable amount on the customer's bill. The exempt services may be combined in a single amount under the designation "non-taxable mailing". (See: Department of Taxation and Finance, Collecting and Reporting Instructions for Printers and Mailers, Form ST-152 (5/71) and supplement (5/77)).

Section 1105(a) of the Sales Tax Law imposes a tax on: "The receipts from every retail sale of tangible personal property. . .".

Section 1115(a)(12) of the Tax Law exempts from tax: "Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property. . . for sale, by manufacturing, processing. . .

Regulations Section 528.13 states that this exemption applies only to machinery and equipment used directly and predominantly in the production phase of a manufacturing operation. (NYCRR 528.13[b][2]).

Therefore, machinery and equipment used for mailing services, and parts, tools and supplies used in connection with its operation, are not exempt. Petitioner is required to pay the applicable sales or use tax on purchases, for its own use, of folding machines, inserters, labelers, postage meters and similar devices.

Section 1101(b)(5) of the Sales Tax Law defines a sale as: "Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, . . . in any manner . . . for a consideration, . . ."

The pertinent Regulations Section provides as follows: "The terms rental, lease, license to use refer to all transactions in which there is a transfer of possession of tangible personal property without a transfer of title to the property. Whether a transaction is a "sale" or a "rental", lease or license to use" shall be determined in accordance with the provisions of the agreement.

Where a lease with an option to purchase has been entered into, and the option is exercised, the tax will be payable on the consideration given when the option is exercised, in addition to the taxes paid or payable on each lease payment." (NYCRR 526.7[c][1],[2]).

In consequence, Petitioner must collect tax on its charges to customers for rental or lease, including eventual purchase, of mailing machines. Petitioner's purchases of such property are purchases for resale within the meaning and intent of Section 1101(b)(4) of the Tax Law, and are therefore not subject to State or local sales tax, provided Petitioner furnishes it supplier a properly completed Resale Certificate (Form ST-120).

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Where Petitioner's customer is an organization described in Section 1116(a) of the Tax Law (viz. one of various "exempt" organizations) the receipts from sales and rentals made directly to the organization would be exempt pursuant to the terms of such statutory exemption provision, if the customer supplies Petitioner with an Exempt Organization Certificate (Form ST-119.1).

DATED: October 28, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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