

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

TSB-A-86(48)S  
Sales Tax  
December 4, 1986

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S860805A

On August 5, 1986, a Petition for Advisory Opinion was received from Bruce MacCorkindale, CPA, 301 Riviera Drive South, Massapequa, New York 11758.

The issue raised is whether finished photographs delivered by a photography studio to various locations within and without New York State as specified by the purchaser are subject to New York sales tax.

Petitioner's client is a corporation located in New York City. The corporation's only business is that of a photography studio.

The corporation is involved in three different types of sale and delivery transactions involving New York and non-New York clients.

1. Sale to a non-New York State client whereby the finished photographs are shipped to the client outside of the state via a postal courier.
2. Sale to a non-New York State client whereby the finished photographs are delivered to a New York City location specified by the client for eventual transmittal via intercompany mails to the non-New York location.
3. Sale to a New York State client whereby the finished photographs are delivered to a New York State location.

Section 1105(a) of Article 28 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." The Sales and Use Tax Regulations provide that "The sales tax is a "destination tax," that is, the point of delivery or point at which possession is transferred by the vendor to the purchaser or its designee controls both the tax incident and tax rate." 20 NYCRR 525.2(a)(3).

In the first of these situations, the corporation ships the finished photographs out of New York State to a non-New York purchaser via a postal courier. No sales tax should be collected on such sale because the purchaser takes possession of the goods outside of New York State.

The second situation involves the delivery of the finished photographs to clients or clients' designees within New York State for eventual transmittal via intercompany mails to a non-New York location. Such sales are New York sales notwithstanding the subsequent removal of the photographs from New York. F. & M. Schaefer Brewing Co. v. Gerosa, 4 NY2d 423 (1958); Savemart v. State Tax Commission, 105 AD2d 1001 (1984); In the Matter of Seafarer Fiberglass Yachts, Inc. 474 F. Supp. 1097 (1979).

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Accordingly, the photography studio is required to collect sales tax on all such sales unless the purchaser presents a properly completed exemption document, such as an Exempt Organization Certificate (Form ST-119.1).

The third situation involves the sale and delivery of the finished photographs to clients in New York State. Under these circumstances, the photography studio should collect sales tax unless the purchaser presents a properly completed exemption document, such as a Resale Certificate (Form ST-120).

It should be noted that in the second and third situations above, sales tax is applicable to the total amount charged by the photography studio. Victor La Sala Advisory Opinion of the State Tax Commission, October 7, 1981, TSB-A-81(41)S. The applicable rate of sales tax to be collected is the State rate plus the local sales tax imposed by the locality in which delivery is made.

DATED: December 4, 1986

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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