

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

TSB-A-87(11)S
Sales Tax
February 6, 1987

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S830722B

On July 22, 1983, a Petition for Advisory Opinion was received from The D.M. Group, Inc., 477 Madison Avenue, New York, New York 10022.

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

Petitioner designs and produces printed promotional material for its clients and also mails such material to its client's customers (designees). Petitioner is responsible for all areas of production and distribution including, but not limited to, the preparation of copy and artwork as well as the actual production of the promotional material and the mailing thereof.

Petitioner rents mailing lists which are used for the distribution of the promotional material. The fee paid by Petitioner generally permits only one use of each list. Petitioner receives the mailing lists in the form of either electronic tapes or gummed labels with the addressees' names and addresses printed thereon.

The electronic tape is used with machinery which "reads" the tape and imprints the customer's (designee of the client) name and address on the promotional material which is then inserted in a window envelope to permit the mailing thereof. The gummed labels, on the other hand, are affixed to the envelope containing the promotional material produced by Petitioner. In either case, Petitioner delivers the materials to the U.S. Post Office for mailing to addressees located within and without New York State.

Point I

Petitioner proposes that since it has been held that the rental of mailing lists in the form of computer tapes constituted sales of information, taxable pursuant to section 1105(c) of the Tax Law, (Matter of Harold E. Mertz et. al., v State Tax Commission, 89 A.D. 396), it should be afforded the exemption from tax provided for by section 1115(d) of the Tax Law.

Section 1115(d) of the Tax Law states:

(d) Services otherwise taxable under paragraphs (1), (2), or (3) of subdivision (c) of section eleven hundred five shall be exempt from tax under this article if the tangible property upon which the services were performed is delivered to the purchaser outside this state for use outside this state.

In the instant case, the property is never used outside of the state since "use" is defined by section 1101(b)(7) of the Tax Law as the exercise of any right or power over tangible personal property and such right or power was lost once the property was delivered to the U.S. Post Office.

In the Matter of Bennett Brothers, Inc. v. State Tax Commission, 62 AD2d614 (1978); In the Matter of the Application of Ford Motor Company, Determination of the State Tax Commission, September 15, 1976, STH 77-31. Accordingly, the exemption provided by section 1115(d) is not available to Petitioner.

Petitioner proposes, in the alternative, that a mailing list in the form of electronic tape be categorized as machinery or equipment used in the production of printed matter for sale and exempt from tax pursuant to section 1115(a)(12) of the Tax Law.

Petitioner maintains that a mailing list in the form of electronic tape may be used to transfer information to the printed page in the same way that layouts, mechanicals and color separations transfer information to the printed page.

Petitioner maintains further that since layouts, mechanicals and color separations used in the production of printed matter for sale qualify for exemption from tax under section 1115(a)(12) of the Tax Law, (see Printing Industry TSB-M-79(7.1)S), electronic tape used in a like manner should also be exempt.

Section 1115(a)(12) of the Tax Law provides, in part, for an exemption from tax with respect to "Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property. . . for sale, by manufacturing. . ."

Inasmuch as the electronic tape is used in the performance of a mailing service rather than in the production phase of manufacturing, it does not qualify for the exemption provided by section 1115(a)(12) of the Tax Law.

Point II

With respect to the rental of mailing lists involving pre-addressed gummed labels, Petitioner proposes that it be afforded an exemption under section 1115(a)(19) of the Tax Law. Such section provides an exemption for:

Cartons, containers and wrapping and packaging materials and supplies, and components thereof for use and consumption by a vendor in packaging or packing tangible personal property for sale and actually transferred by the vendor to the purchaser.

The sales and use tax regulations define packaging material to include "gummed labels". 20 NYCRR 528.20(b)(1).

Although the labels in question may be used in the distribution stage, they are not considered packaging material within the meaning of section 1115(a)(19). Labels used as packaging are those shipping labels normally used to ship a product to a vendor's customer. In the instant case, Petitioner is providing a mailing service when it mails the thousand of pieces of promotional material directly to its customer's designees. In doing so, it is affixing labels on tangible personal property not held

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for sale. Thus, Petitioner does not qualify for the exemption allowed under 1115 (a)(19) of the Tax Law.

DATED: February 6, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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