

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

TSB-A-87(14)S
Sales Tax
March 12, 1987

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S861216A

On December 16, 1986, a Petition For Advisory Opinion was received from The Hearst Corporation, 959 Eighth Avenue, New York, New York 10019.

The issue raised is whether the sale of a photographic copy of an original comic strip is a right to reproduce or the sale of tangible personal property for purposes of the sales and use taxes imposed under Articles 28 and 29 of the Tax Law.

Petitioner's King Features Syndicate Division syndicates daily comic strips. Petitioner contracts with various newspapers around the country and grants them a one-time right to publish a particular comic strip. The comic strip supplied to each newspaper by Petitioner consists of a photocopy of six daily installments of the particular comic strip. The photocopy is mailed out on a weekly basis to each newspaper client. The newspaper client uses each installment of the comic strip on the appropriate day of the week to print its newspaper.

Section 526.7(f) of the Sales Tax Regulations provides as follows:

- (f) Reproduction rights. (1) The granting of a right to reproduce an original painting, illustration, photograph, sculpture, manuscript or other similar work is not a license to use or a sale, and is not taxable, where the payment made for such right is in the nature of a royalty to the grantor under the laws relating to artistic and literary property.
- (2) Mere temporary possession or custody for the purpose of making the reproduction is not deemed to be a transfer of possession which would convert the reproduction right into a license to use. (See Howitt v. Street and Smith Publications, Inc., 276 N.Y. 345 and Matter of Frissell v. McGoldrick, 300 N.Y. 370).
- (3) Where some use other than reproduction is made of the original work, such as retouching or exhibiting a photograph, the transaction is a license to use, which is taxable. 20NYCRR 526.7.

A right to reproduce will be deemed to exist only if all of the requirements of regulation section 526.7(f) are met. In the instant case, it is clear that the property at issue is not an original illustration within the meaning of the regulation. Furthermore, a right to reproduce cannot exist where possession or custody of the property is more than merely temporary for purposes of making the reproduction. Petitioner has demonstrated nothing which would indicate that the newspaper's possession of the property transferred is anything other than permanent. Accordingly, it must be concluded that Petitioner's transfers of cartoon strips are sales of tangible personal property within the meaning of regulation section 526.7(f).

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It should be noted however, that the Tax Commission has determined that artwork, illustrations, layouts, drawings, paintings, mechanicals, overlays, designs, photographs and paste-ups may qualify as machinery and equipment within the meaning of section 1115(a)(12) of the Tax Law. TSB-M-79(7.1)S. Accordingly, such cartoon strips will qualify for the exemption afforded under section 1115(a)(12) if they are used directly and predominantly in the production of tangible personal property for sale. Such machinery and equipment would be similarly exempt from local sales tax (other than New York City's) pursuant to the provisions of section 1210(a)(1) of the Tax Law. Section 1107(b) of the Tax Law provides that such machinery and equipment does not qualify for exemption from the sales tax imposed within the City of New York.

DATED: March 12, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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