

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

TSB-A-91 (51)S
Sales Tax
July 22, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910416A

On April 16, 1991 a Petition for Advisory Opinion was received from Petra Fashions, Inc., 35 Cherry Hill Park, Danvers, MA 01923.

The issue raised by Petitioner, Petra Fashions, Inc., is whether merchandise that is obtained through credits that are given to individuals that hold home merchandise parties are subject to sales tax.

Petitioner is a direct sales company that operates home parties. As an incentive to hold a party, Petitioner offers credits to its hostesses that can only be used to obtain Petitioner's line of merchandise.

Section 1101(b)(3) of the Tax Law refers to a receipt as "The amount of the sale price of any property. . .valued in money, whether received in money or otherwise. . . ."

Section 1101(b)(4) defines a retail sale as "A sale of tangible personal property to any person for any purpose, other than (A) for resale. . . ."

Section 1101(b)(5) defines a sale as "Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration. . ."

Section 1105(a) imposes a sales tax on "The receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

The transfer of a credit to obtain merchandise for a consideration is a sale of tangible personal property within the meaning of the above noted sections of the Tax Law. Section 1105(a) of the Tax Law imposes a tax on sales at retail of tangible personal property. The amount subject to the tax is the receipt as defined in Section 1101(b)(3) of the Tax Law. The sales tax is a "transaction tax", liability for the tax occurring at the time of the transaction. The tax therefore becomes due at the time of transfer of property.

Accordingly, the transfer of a credit to obtain merchandise from Petitioner to one of its hostesses for conducting a home party at which Petitioner's products are sold, is a retail sale within the meaning and intent of Sections 1101(b)(3), 1101(b)(4) and 1101(b)(5) of the Tax Law. The use of the credit is subject to the sales tax at the time the hostess uses the credit to obtain

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merchandise. New York Air Brake, Adv Op, St Tx Comm, June 12, 1980 TSB-H-80(104)S; Peat Marwick, Mitchell Co., Adv Op, St Tx Comm, October 20, 1986, TSB-A-86(41)S.

DATED: July 22, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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