

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

TSB-A-93 (10)S  
Sales Tax  
January 25, 1993

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920218A

On February 18, 1992 a Petition for Advisory Opinion was received from Pitney Bowes Management Services, Inc., World Headquarters, Stamford, CT 06926-0700.

Petitioner, Pitney Bowes Management Services, Inc. has or proposes to expand its businesses by offering clients the various services described as follows:

1. Contract Management Services. Petitioner will provide services to manage various operations for companies at their location or at other locations within the State. Petitioner may provide personnel only, personnel and supplies, and/or personnel, supplies and equipment.

The Contract Management Services provided may include any one or a combination of the following:

- a. Mailroom: Printing of address labels, affixing of labels to material to be mailed, affixing of postage to mail, bagging and mailing of envelopes and packages, packing materials into cartons for shipment by common carrier, internal mail pickup and delivery, maintaining mailing lists, and processing and delivery of packages to express carriers.
- b. Production Mail: In addition to the above operations performed in the Mailroom, Production Mail operations include printing, folding, sorting, and inserting documents for mailing, zip or bar coding of mail, automated mail processing including forms design, and laser or other printing.

In Mailroom and Production Mail operations, the mailings are made to points within and without the State. With the exception of certain packing and shipping materials, printed matter (paper, envelopes, labels etc.) may be provided by either Petitioner or by the client. Equipment for these operations may be provided by Petitioner or by the client.

- c. Facsimile Services: Operation of facsimile equipment for incoming and outgoing messages and delivery of messages. In a facsimile operation, personnel are provided by Petitioner but equipment and supplies may be provided by either Petitioner or the client.

- d. File Management Centers: Indexing, filing, retrieval, pickup and delivery of documents. In a small file management operation, Petitioner provides only personnel while in a larger more sophisticated operation supplies and equipment (computer system and bar coding equipment) will generally also be provided by Petitioner.
  - e. Reprographic Copy Centers: Original documents are sent to the center by the client for purposes of having copies made. In addition, copies may be punched and bound. In litigation cases, documents must be unstapled, numbered, copied, restapled, refiled in the original box and in some cases indexed. In a reprographic operations, Petitioner provides personnel, but supplies and equipment may be provided by Petitioner or the client.
  - f. Offset Printing Services: Masters are made of the original documents delivered to the center by the client and required copies are made including finishing (punching, and binding where required). Petitioner provides personnel, but supplies and equipment may be provided by Petitioner or the client.
  - g. Shipping and Receiving Operations: Petitioner provides personnel to receive, ship and deliver materials. No supplies or equipment are provided by Petitioner.
  - h. Messenger or Delivery Services: Personnel provided by Petitioner pick up and deliver documents to various locations within a geographic area. Petitioner provides personnel, but at times may also be required to provide vehicles.
  - i. Related Services: In the area of related services, Petitioner provides personnel who perform any one or more of the following services: scheduling the use of audio visual equipment and facilities, operation of the telephone message center, receptionist, stationery and supply ordering and stocking, conference room scheduling, etc.
2. Commercial Reprographics Center. At Petitioner's facility, Petitioner will make copies of original documents submitted by customers and provide related copy services (binding, stapling, numbering, etc.). Petitioner provides the personnel, supplies and equipment required to produce copies. The customer is generally charged a price for each copy made.

When providing Contract Management Services, all direct costs, administrative expenses and overhead are paid directly by Petitioner. All personnel provided by Petitioner will be part-time or full-time permanent employees of Petitioner, paid by Petitioner, and entitled to benefits under Petitioner's employee benefit plans. Recruitment and training will take place at Petitioner's offices. Generally, it is

expected that personnel involved in these operations will work primarily at the client's facility, but occasionally separate facilities are established.

In most situations, the machinery and equipment used by Petitioner is owned by Petitioner. On occasion the client will sell its equipment to Petitioner who will then use the equipment to perform the services.

Generally, clients are billed for services under a one to five year contract term at a monthly minimum fee for a defined level of services plus a fixed price per piece in excess of the minimum. Included in the price will be charges for personnel, supplies and equipment where applicable, travel, staff support and other overhead costs. Generally, postage and express mail charges are paid for by the client.

Petitioner has set forth various issues concerning the application of New York State and local sales and use tax to its new or proposed business activities. The following are the issues presented by Petitioner and the appropriate responses:

Q.I: Are Petitioner's services as enumerated in 1.a. thru 1.i. and in 2. above exempt from sales and use tax?

A.I(1)(a) Mailroom. 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 printed 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, receipts from charges for printing address labels and affixing labels to material to be mailed are considered to be receipts from either sales of tangible personal property or from sales of the services of processing, printing or imprinting tangible personal property. Petitioner's receipts from such charges will be subject to the tax imposed under either Section 1105(a) of the Tax Law or Section 1105(c)(2) of the Tax law, whichever is applicable, based upon the percentage of mailing recipients in New York State.

Petitioner will be liable for collecting the statewide and appropriate local sales tax in effect at the point from which the actual mailing service occurs. Maintaining a customer's mailing list is considered to be maintaining tangible personal property. Receipts from charges for maintaining a customer's mailing list are subject to the tax imposed under Section 1105(c)(3) of the Tax Law. However, charges for the portion of a mailing list used in conjunction with the distribution of exempt promotional materials will be exempt to the extent the promotional materials are shipped to addressees outside New York State.

Generally, receipts received by Petitioner for affixing postage to mail, bagging and mailing envelopes and packages, packing materials into cartons for shipment by common carrier, internal mail pickup and delivery, and processing of packages prior to delivery to express carriers are not subject to State or local sales tax provided such charges are separately stated on the billing rendered to the customer. These exempt services may be combined in a single amount under the designation "non-taxable mailing". (See: Department of Taxation and Finance, Collection and Reporting Instructions for Printers and Mailers, Publication 831 (8/92)). However, it is noted that the sales tax status of receipts for delivering packages to express carriers will be the same as the sales tax status of Petitioner's receipts from the sale of the items of tangible personal property being delivered.

When Petitioner provides packaging and shipping materials for use by Petitioner in providing its mailroom service, Petitioner's receipts from charges for such materials will be considered as receipts from the sale of tangible personal property and will be subject to the tax imposed under Section 1105(a) of the Tax Law.

(b) Production mail: Where production mail operations are the same as the mailroom operations described above, the sales tax status of the receipts from the production mail operations will be the same as the tax status of the receipts from the mailroom operations.

The receipts from the production mail operations of printing documents for mailing, zip or bar coding of mail, designing and printing of forms such as client's billing statements, and laser or other printing are considered to be receipts from the sale of services subject to the tax imposed under Section 1105(c)(2) of the Tax Law or receipts from the sale of tangible personal property subject to tax under Section 1105(a) of the Tax Law, whichever is applicable.

When performing the mailroom operations and the production mail operations Petitioner is considered to be acting as a printer/mailer. Accordingly, if Petitioner delivers printed or other duplicated promotional materials to a customer in New York State Petitioner must collect the statewide and local sales tax in effect at the locality where possession of the property is transferred to the customer. However, if the customer will subsequently send some or all of the matter to persons outside of the State, the customer's purchase of the promotional material which will be distributed to persons outside the state will be eligible for the exemption from sales tax under Section 1115(n) of the Tax Law provided the customer gives Petitioner a properly completed form ST-121, Exempt Use Certificate. The customer must indicate directly on the exempt use certificate what percentage of the purchase is exempt from tax. See, The Sales and Use Tax and Promotional Materials, TSB-M-92(4)S.

If Petitioner dispatches printed or other duplicated promotional materials from within New York State directly to recipients designated by its customer, Petitioner will be liable to collect, on its entire printing charge, the sales tax in effect at the point from which the mailing service occurs, unless Petitioner can substantiate the percentage of out-of-state destinations on the mailing list and

the addresses of all in-state recipients. Customer purchase orders, shipping instructions, sales contracts, and similar documents giving mailing directions are acceptable as proof of the destinations.

Where records establishing the number of addresses in each New York State taxing jurisdiction are not available, the alternative method described below may be substituted to determine State and local sales and use taxes, provided the following conditions are met:

- (1) The mailing must include points throughout New York State.
- (2) If the mailing list includes out-of-state mailing and is compiled by geographic location, an actual count of out-of-state mailing should be made. If the list is not compiled by geographic location, a sampling technique, utilizing the lesser of 10% of the list or 5000 mailing pieces, may be employed.
- (3) The actual number of pieces mailed to New York City must be determined. Sampling under the conditions in Item 2, may be used.

Under this method an alternative rate, based on the population of New York State (excluding New York City) and the combined tax rates imposed thereon, is applied to the New York State (excluding New York City) mailings and the currently imposed rate is applied to New York City mailings. Each invoice rendered for mailing services under the alternate method must state the total pieces dispatched, the number of pieces taxable at the New York City tax rate, and the number of pieces mailed to other New York State destinations at the currently effective alternative rate. This rate and the statewide locality distribution percentage may be obtained from Department of Taxation and Finance Publication 831, Collection and Reporting Instructions for Printers and Mailers, which is amended periodically to reflect rate changes. To receive each updated issue, a printer or mailer may request to be placed on the mailing list maintained by the Tax Department for that purpose. Publication 831 also provides detailed instructions for the application of the alternate rate method.

The alternative tax rate formula may be applied only to sales of promotional material, such as free gifts and samples, advertising literature, catalogs, sales and ordering forms, business reply envelopes, displays, brochures, corporate annual reports and outside mailing envelopes and address labels which are used for the exclusive purpose of mailing promotional material only.

Printed matter upon which clerical, office typing or computer printing operations must be performed to complete it for the senders use and to prepare it for the individual recipient, is subject to tax at the location where the actual mailing service occurs. This category of mailings would comprise invoices, statement forms, payment notices, letterheads, (except letterheads intended for use as promotional materials) and like items which by their contents are not interchangeable with other addressees on a mailing list.

Promotional material mailed by Petitioner to its customer's designees is considered to be used at the point to which it is mailed. Therefore, no tax is due when promotional material is mailed out of the State. Likewise, charges for clerical functions performed on promotional materials being

mailed out of the state are not subject to sales tax. (See, Collection and Reporting Instructions for Printers and Mailers, New York State Department of Taxation and Finance Publication 831 (8/92)).

When the mailing contains items, each of which is treated differently for sales tax purposes, the appropriate sales tax treatment may be applied to each component of the mailing provided adequate records of substantiation of the charges for each component are maintained. For example, the alternate method of computing sales tax may be applied to advertising brochures enclosed with monthly invoices, even though the alternate method cannot be used for the invoice portion.

(c) Facsimile Services: When Petitioner provides personnel, equipment and supplies, Petitioner is considered to be providing facsimile services. Petitioner's receipts from providing facsimile services are considered to be receipts from telephone and telegraph service and are subject to the tax imposed under Section 1105(b) of the Tax Law.

When Petitioner only provides personnel to operate the client's facsimile equipment Petitioner is not considered to be performing any of the taxable services enumerated under Section 1105(c) of the Tax Law. Accordingly, Petitioner's receipts from charges for only operating the client's facsimile equipment will not be subject to the tax imposed under Section 1105(c) of the Tax Law, provided the charges are separately stated on the billing rendered to the client.

(d) File Management Centers: In an operation where Petitioner only provides personnel for the purpose of indexing, filing, retrieval, pickup and delivery of documents, Petitioner is not considered to be performing any of the services enumerated under Section 1105(c) of the Tax Law. Accordingly, Petitioner's receipts from such services are not subject to the tax imposed under Section 1105(c) of the Tax Law. However, it is noted that if Petitioner's filing service or a portion thereof consists of filing various loose-leaf update services which may be provided to Petitioner's customers by the publisher/printer thereof (e.g., Commerce Clearing House, Prentice Hall) Petitioner will be considered to be maintaining, servicing or repairing tangible personal property and the charge by Petitioner to the customer for such service or portion thereof will be subject to the tax imposed under Section 1105(c)(3) of the Tax Law.

In certain instances, Petitioner also provides a computer system, bar coding equipment and supplies. Petitioner uses these items for purposes of maintaining a record of the client's files and for identifying by whom a file has been charged out. Petitioner's receipts from charges to the client for this expanded service are not subject to tax as such service is not among the services enumerated under Section 1105(c) of the Tax Law.

(e) Reprographic Copy Centers: When Petitioner provides only personnel with supplies and equipment provided by the client, Petitioner will be considered to be performing the service of processing, printing or imprinting tangible personal property. Petitioner's receipts from charges to the client for performing this service will be subject to the tax imposed under Section 1105(c)(2) of

the Tax Law. When Petitioner provides personnel, supplies and equipment for use in operating the clients reprographic copy center, Petitioner will be considered to be making sales of tangible personal property to the client and the total receipts from such sales will be subject to the tax imposed under Section 1105(a) of the Tax Law.

(f) Offset Printing Services: When Petitioner provides only personnel with supplies and equipment being provided by the client, Petitioner will be considered to be performing a service of processing, printing or imprinting tangible personal property. Petitioner's receipts from charges to the client for performing this service will be subject to the tax imposed under Section 1105(c)(2) of the Tax Law. When Petitioner provides personnel, supplies and equipment Petitioner will be considered to be making sales of tangible personal property to the client and the total receipts from such sales will be subject to the tax imposed under Section 1105(a) of the Tax Law.

(g) Shipping and Receiving Operations: Petitioner's personnel, when performing shipping and receiving services, are not considered to be performing any of the services enumerated under Section 1105(c) of the Tax Law. Accordingly, Petitioner's receipts from shipping and receiving services are not subject to State or local sales tax.

(h) Messenger or Delivery Services: Messenger or delivery services do not fall within any of the services enumerated under Section 1105(c) of the Tax Law. Accordingly, Petitioner's receipts from performing such services are not subject to state or local sales tax.

(i) Related Services: When Petitioner's personnel perform the service of audio visual equipment and facilities management which merely consists of scheduling use of the equipment and supplies and does not entail the actual operation of such equipment, or the service of operation of the telephone message center which is similar to a switchboard or any of the other related services, Petitioner's personnel are not considered to be performing any of the services enumerated under section 1105(c) of the Tax Law nor are they considered to be performing a Section 1105(b) telephone or telegraph service. Accordingly, the receipts from charges to the client for related services are not subject to state or local sales tax.

(2) Commercial Reprographic Center: Petitioner's receipts from sales of copies to customers are considered to be receipts from sales of tangible personal property and are subject to the tax imposed under Section 1105(a) of the Tax Law.

Q.II: Would the answers to Question I be different if Petitioner provided personnel only, similar to a temporary service contractor, and did not provide supplies or equipment?

A.II: Technical Services Bureau Memorandum TSB-M-87(13)S, Taxability of Services Provided by Temporary Service Contractors states, in part:

"Temporary service contractors can be distinguished from employment agencies in that the temporary service contractor, unlike the employment agency, is the employer of its own staff and is directly responsible for the salaries, withholding of taxes, and

the hiring and firing of the individuals who are rendering services to its clients. In addition, the temporary service contractor controls to which of its clients the individual will be assigned.

An employment agency, on the other hand, provides individuals who become the employees of the agency's client and who maintain no further relationship with the agency. The individual does not report, directly or indirectly, to the agency after being hired by the client, nor may the agency terminate the services of the individual or otherwise affect the relationship between the individual and the client. Since an employment agency merely refers personnel, its charges to its clients are not subject to sales or use tax.

Section 1105(c) of the Tax Law imposes a tax on certain services . . .

When a temporary service contractor provides personnel to perform such taxable services for its client, the fee paid by the client for these services constitutes a receipt subject to tax. Accordingly, the temporary service contractor is required to collect sales tax on the fee charged to the client for such taxable services, regardless of how the charge is arrived at or how much the contractor is required to pay its personnel."

In the instant matter if Petitioner provides personnel only, similar to a temporary service contractor, Petitioner's liability for collecting sales tax on the receipts from contract management services will be unchanged from Petitioner's liability as stated in those portions of answers (1)(a) through (1)(i) which pertained to situations wherein Petitioner also provided personnel only.

Where Petitioner provides personnel only at a Commercial Reprographic Center, Petitioner will be considered to be performing the service of processing, printing or imprinting tangible personal property and the receipts from charges to the clients for performing such service will be subject to the tax imposed under Section 1105(c)(2) of the Tax Law.

Q.III: Would the answers to Q.I. differ if the services were performed at Petitioner's facility within New York State versus the client's facility within New York State?

A.III: Answers (1)(a) through (1)(i) and (2) will be unchanged as the location where the services are performed, whether at Petitioner's facility or at the client's facility, will not alter the taxable status of the performed services.

Q.IV: Would the answers to Q.I. be different if the supplies and materials consumed in providing the service were "inconsequential"?

A.IV: Neither the New York State Tax Law nor the Sales and Use Tax Regulations make any reference to the term "inconsequential" or "inconsequential element", even though certain taxing jurisdictions outside New York State may do so. When performing a taxable service within New



York State or selling tangible personal property within New York State, the total receipts are subject to state and local sales tax imposed under Section 1105(a) or(c) of the Tax Law, whichever is applicable. Section 526.5(e) of the Sales and Use Tax Regulations states, in part:

Expenses. All expenses ... incurred by a vendor in making a sale, regardless of their taxable status and regardless of whether they are billed to a customer are not deductible from the receipts.

Q.V: Would the answers to Q.I. differ if charges for labor or other services were separately stated on the invoice?

A.V: Answers (1)(a) through (1)(i) and 2 will be unchanged regardless of whether Petitioner separately states charges for labor or other services. However, it is noted that in any instance where Petitioner is billing the client for both taxable and exempt services Petitioner should separately state the charges to the client and any management fees, overhead salaries and other expenses should be allocated to the applicable service and the appropriate tax collected.

Q.VI: Would supplies and materials purchased by Petitioner and used in the various operations be exempt from sales tax?

A.VI: Petitioner's purchases of supplies and materials will be subject to State and local sales tax unless Petitioner can substantiate that the supplies or materials are used in an exempt manner. Where the supplies or materials purchased by Petitioner are actually transferred to the customer as a sale of tangible personal property or are transferred to the customer in conjunction with taxable services being performed by Petitioner, Petitioner will be considered to be reselling such items. Petitioner may purchase such items tax exempt by giving the supplier a properly Form ST-120, Resale Certificate.

Q.VII: Would machinery or equipment purchased, rented or leased by Petitioner in connection with providing the services qualify for a sales and use tax exemption?

A.VII: Petitioner's purchases, rentals or leases of machinery or equipment will be subject to State or local sales tax except in instances where Petitioner directly and predominantly (more than 50% of use) uses the machinery or equipment to produce tangible personal property for sale to the client. In such instances, Petitioner's purchases, rentals or leases will qualify for the exemption provided under Section 1115(a)(12) of the Tax Law. When making such purchases, rental or leases, Petitioner should give the seller a properly completed form ST-121, Exempt Use Certificate, for purposes of substantiating that the transaction was not subject to State or local sales tax.

Q.VIII: Would the purchase of machinery or equipment qualify for a casual sale exemption in instances where Petitioner purchases equipment from a client or assumes the client's rental or lease payments?

A.VIII: The New York State Tax Law does not provide an exemption from tax for casual sales other than for certain casual sales at a person's residence during a calendar year.

Section 523.3(g)(1)(i) of the Sales and Use Regulations states that "any person in New York State making a taxable sale of tangible personal property or services in New York State, and who is not required to file periodic returns under subdivision (a) of this section, must collect the tax on such sale and file a report of casual sale."

Petitioner's purchase of a client's machinery or equipment would be considered a retail purchase of tangible personal property subject to the tax imposed under Section 1105(a) of the Tax Law and Petitioner's client would be liable for collecting sales tax and submitting it with the sales tax return for the period in which the transaction occurred if the client is required to be registered as a sales tax vendor or with a report of casual sale, whichever is applicable.

If the machinery or equipment purchased by Petitioner will be used directly and predominantly (more than 50%) to produce tangible personal property for sale to the client, Petitioner's purchases would qualify for the exemption from sales tax provided under Section 1115(a)(12) of the Tax Law. Petitioner's rental or lease of the machinery or equipment would also qualify for the exemption provided by Section 1115(a)(12) of the Tax Law provided the client assigned the rental or lease to Petitioner. If Petitioner is entitled to the exemption Petitioner must provide the seller, renter or lessor with a properly completed form ST-121, Exempt Use Certificate, for purposes of substantiating that the transaction was not subject to sales tax.

However, if the client is the lessee of the machinery and equipment and is not using the equipment to produce tangible personal property for sale the lease payments to the lessor are subject to State and local sales tax. The fact that Petitioner has agreed to make the lease payments on the client's behalf does not change the tax status of the lease payments as the client has not assigned the lease to the Petitioner and the client continues to be the lessee of the machinery and equipment. Under these circumstances Petitioner's payments to the lessor will be subject to State and local sales tax.

DATED: January 25, 1993

/s/  
PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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