

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

TSB-A-93 (45)S
Sales Tax
August 23, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S930427A

On April 27, 1993, a Petition for Advisory Opinion was received from Monetary Management of New York, Inc., 150 State Street, Albany, New York 12207.

The issues raised by Petitioner, Monetary Management of New York, Inc., are:

1. Whether Petitioner's purchases of services for the transportation and delivery of food stamp coupons from the United States Department of Agriculture (hereinafter the "USDA") print plants by armored carriers to armored carrier bulk storage facilities in New York State are subject to New York State and local sales and use taxes.
2. Whether Petitioner's purchases of services for the storage of food stamp coupons in armored carrier bulk storage facilities in New York State are subject to New York State and local sales and use taxes.
3. Whether Petitioner's purchases of services for the transportation and delivery of food stamp coupons via armored carriers to food coupon issuance agents are subject to New York State and local sales and use taxes.

The New York State Department of Social Services, a state agency, has been granted authority from the Federal government to administer the Food Coupon Program in New York State in accordance with the Food Stamp Act of 1977 (Public Law 95-113). The New York State Department of Social Services has, in turn, entered into a contract with Citibank, N.A., to administer the Alternate Food Stamp Issuance Program in New York State by reassignment of an original contract from First Texas Savings Association to Citibank's affiliate Citicorp Services, Inc. (hereinafter "Citicorp"). Citicorp has contracted with Monetary Management Corporation, parent company of Petitioner, to enable Citicorp to carry out its obligations to the New York State Department of Social Services in administering the program.

Nearly 1,300 food coupon issuance agents located across New York State receive their monthly supply of food coupons, which are printed and provided by the USDA as part of the Federal Food Coupon Program, via armored car services. At present, Petitioner has a contract with two armored carriers, i.e., Armored Motor Services of America ("AMSA") and Hudson Armored Car and Courier Service (hereinafter "Hudson Armored") to transport and deliver the food stamp coupons.

Petitioner is required to secure food coupons and arrange for their transportation to issuance agents via armored car services because State and federal regulations stipulate that food coupons are an obligation of the Federal government, similar to currency, and as such the same control procedures must be applied to food coupons. Petitioner is, therefore, contractually bound to hire

armored car services for the delivery and storage of food coupons as a participant of the Alternate Food Stamp Issuance Program.

Section B of the New York State Alternate Food Stamp Issuance Project Second Amendment Agreement between Citibank, as Contractor, Monetary Management Corporation as Citibank's sub-agent, and the New York State Department of Social Services provides that Citibank and Monetary Management Corporation are agents of the Department of Social Services for services performed in connection with the storage, transport and delivery of food stamp coupons. Section B reads, in part, as follows:

B. TAXES AND FEES

1. The Department, as a general and unrestricted agency under the laws of the State of New York, hereby reconfers to the extent allowed by law such agency status to the Contractor, and to Monetary Management Corporation, a New York Corporation as Contractor's subagent responsible for: (i) the receipt for, transport, and delivery of food stamp coupons from the USDA print plant to armored carrier bulk storage facilities in New York State; (ii) the storage of food stamp coupons in bulk storage facilities; and (iii) the transport and delivery of food stamp coupons.

2. The Department acknowledges that any sales tax exemption resulting from the delegation set forth in paragraph B.1 above applies solely to services provided in connection with the storage, transport and delivery of food stamp coupons pursuant to the Principal Agreement.

In addition a letter dated August 29, 1988, from the Department of Social Services approved Monetary Management Corporation's request to delegate all work that was to be performed by it, as subcontractor under its agreement with Department of Social Services to Petitioner, a wholly owned subsidiary of Monetary Management Corporation.

Invoices from Hudson Armored and AMSA state that "Petitioner is an agent for NYSDSS when administering the food stamp program which includes the delivery and storage of food coupons."

Section 1105(c) of the Tax Law provides, in part, as follows:

(c) The receipts from every sale, except for resale, of the following services:

* * *

(4) Storing all tangible personal property not held for sale-in the regular course of business and the rental of safe deposit boxes or similar space.

* * *

(8) Protective and detective services, including, but not limited to, all services provided by or through alarm or protective systems of every nature, including, but not limited to, protection burglary, theft, fire, water damage or any malfunction of industrial processes or any other malfunction of or damage to property or injury to persons, detective agencies, armored car services and guard, patrol and watchman services of every nature other than the performance of such services by a port watchman licensed by the waterfront commission of New York harbor, whether or not tangible personal property is transferred in conjunction therewith. (emphasis added)

Section 1116(a) of the Tax Law provides, in part, as follows:

Sec. 1116. Exempt organizations--(a) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

(1) The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services or property of a kind not ordinarily sold by private persons;

In the Matter of MGK Constructors, Dec Tax App Trib, March 5, 1992, the Tribunal held that when acting as a purchaser, user or consumer, the City of New York is not subject to sales tax pursuant to Section 1116(a)(1) of the Tax Law. Moreover, a contractor acting as an agent of the City would likewise not be subject to sales tax in accordance with Sections 541.2(c) and 529.2(b) of the Sales and Use Tax Regulations.

The Tribunal further held that the criteria set out in Section 541.3(d)(4) of the Sales and Use Tax Regulations for establishing whether an agency relationship exists is applicable only to exempt organizations identified under Sections 1116(a)(3) - (6) of the Tax Law, and as New York City is an exempt organization pursuant to Section 1116(a)(1) of the Tax Law, it was not subject to such criteria.

Thus, the Tribunal held that since no regulation sets forth a criteria for establishing whether an agency relationship exists with an exempt organization identified in Sections 1116(a)(1) and (2) of the Tax Law, that the general principle of agency as cited in the Matter of Hooper Holmes, Inc. v. Wetzler, 152 AD2d 871, 544 NYS2d 233, 235, lv denied 75 NY2d 706, 552 NYS2d 929, must be applied. In Hooper Holmes, Inc. v. Wetzler, supra, the court stated: "To establish an agency or representative relationship there must be a manifestation that petitioners consented to act on behalf of their clients, subject to the latter's control and that the clients authorized this fiduciary relationship."

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In the instant case, Section B of the New York State Alternate Food Stamp Issuance Project Second Amendment Agreement between Citibank, as Contractor, Monetary Management Corporation, as subcontractor, and the New York State Department of Social Services provides that Monetary Management Corporation is an agent of the Department of Social Services for services performed in connection with the storage, transport and delivery of food storage coupons, and by letter dated August 29, 1988, the Department of Social Services further approved of Monetary Management Corporation delegating its duties to Petitioner, a wholly owned subsidiary. Moreover, invoices from Hudson Armored and AMSA make reference that "Petitioner is an agent for NYSDSS when administering the food stamp program which includes the delivery and storage of food coupons." Therefore, the criteria set forth Hooper Holmes, Inc. v. Wetzler, supra, that the agency relationship be manifested through petitioners consent to act on behalf of its client under the client's control and that the client authorized the fiduciary relationship has been met.

Accordingly, since the New York State Department of Social Services is a governmental entity exempt under Section 1116(a)(1) of the Tax Law and has authorized Petitioner to act as agent on its behalf in connection with the storage, transport, and delivery of food stamp coupons, the charges for the transportation and storage of such food coupons as set forth in issues "1", "2" and "3" are not subject to sales tax as imposed by Sections 1105(c)(4) and (8) of the Tax Law but are exempt from sales tax in accordance with Section 1116(a)(1) of the Tax Law.

DATED: August 23, 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.