

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

TSB-A-94 (27)S
Sales Tax
June 27, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940315A

On March 15, 1994, a Petition for Advisory Opinion was received from Tru-Check Computer Services, Inc., 85 Executive Blvd. Elmsford, New York 10523.

The issue raised by Petitioner, Tru-Check Computer Services, Inc., is whether rebate checks issued by it constitute promotional materials subject to sales tax as defined by Section 1101(b)(12) of the Tax Law.

Part of Petitioner's business deals with clients who use vendor rebate programs to try to increase sales of overstocked inventory, slow moving inventory or new products they would like to introduce into the market place. Petitioner's client informs Petitioner that as an incentive to move certain of its products it will offer a rebate of a certain percentage or an amount of the cost of that product sold by a particular customer of the client. As part of its service Petitioner calculates the amount of the rebate, prints the rebate checks and issues the checks to its client's customers.

Section 1101(b)(12) of the Tax Law defines promotional material as:

Any advertising literature, or other related tangible personal property (whether or not personalized by the recipient's name or other information uniquely related to such person) and envelopes used exclusively to deliver the same. Such other related tangible personal property includes, but is not limited to, free gifts, complimentary maps or other items given to travel club members, applications, order forms and return envelopes with respect to such advertising literature, annual reports, promotional displays and Cheshire labels but does not include invoices, statements and the like. (Emphasis supplied)

Items such as invoices and statements are not included in the definition of promotional materials. The rebate checks issued by Petitioner on behalf of its clients are closely related to the bookkeeping function associated with invoices and statements and therefore should be treated the same. Consequently, the rebate checks do not qualify as promotional materials as defined in Section 1101(b)(12) of the Tax Law.

It should be noted, that while Petitioner's charge for issuing the rebate checks would not be an item subject to sales tax in accordance with the meaning and intent of Section 1101(b)(12) of the Tax Law, Petitioner would be required to pay sales tax on its purchase of any materials, letters or

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other mailings associated with informing its clients' customers of the promotional program as well as on the rebate checks it purchased.

DATED: June 27, 1994

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

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