

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

TSB-A-98(49)S
Sales Tax
July 31, 1998

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S980224A

On February 24, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Mystic Stamp Company, Inc., 9700 Mill Street, Camden, New York, 13316.

The issue raised by Petitioner, Mystic Stamp Company, Inc., is whether printing services and equipment purchased for the production of envelopes for sale are subject to sales or compensating use tax.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner is engaged in the business of direct marketing of postage stamps to customers through a mail order operation located in Camden, New York. One product sold by Petitioner is known in the trade as a "first day cover". These products are comprised of a postage stamp affixed to an envelope, which includes some descriptive text and some artwork, printed by an outside vendor. Petitioner designs the envelope. Petitioner contracts all the printing services for the product as well as the film negatives, color separations and artwork used in the production of this product. All the services and supplies, including paper, necessary for the production of the first day covers are supplied to the printer and/or prep house. This product is then sold to customers.

Petitioner also offers for sale a stamp identical to the one which is affixed to the product referred to above, at a much lower price than the first day cover. There is a premium price associated with the sale of the first day cover.

Applicable Law and Regulations

Section 1101(b)(4) of the Tax Law defines the following:

Retail sale. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property ...

Section 1105(a) of the Tax Law imposes a tax on the receipts from every retail sale of tangible personal property, except as otherwise provided.

Section 1105(c) of the Tax Law imposes a tax on the receipts from every sale, except for resale, of the following services:

* * *

(2) Producing, fabricating, processing, printing or imprinting tangible personal property, performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale, upon which services are performed.

Section 1115(a) of the Tax Law provides:

Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(12) Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting...

Section 526.6(c) of the Sales and Use Tax Regulations provides:

(1) Where a person, in the course of his business operations, purchases tangible personal property or services which he intends to sell, either in the form in which purchased, or as a component part of other property or services, the property or services which he has purchased will be considered as purchased for resale, and therefore not subject to tax until he has transferred the property to his customer.

(2) A sale for resale will be recognized only if the vendor receives a properly completed resale certificate.

(3) Receipts from the sale of property purchased under a resale certificate are not subject to tax at the time of purchase by the person who will resell the property. The receipts are subject to tax at the time of the retail sale.

Section 526.7 of the Sales and Use Tax Regulations provides, in part:

(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.

Section 528.13(c) of the Sales and Use Tax Regulations provides, in part:

(1) Directly means the machinery or equipment must, during the production phase of a process:

(i) act upon or effect a change in material to form the product being sold, or

(ii) have an active causal relationship in the production of the product to be sold, or

(iii) be used in the handling, storage, or conveyance of materials or the product to be sold, or

(iv) be used to place the product to be sold in the package in which it will enter the stream of commerce.

* * *

(4) Machinery and equipment is used predominantly in production, if over 50 percent of its use is directly in the production phase of a process.

Opinion

Petitioner purchases printing services to produce the envelopes known as "first day covers" for resale to its customers. Publication 842, New York State and Local Sales Tax Information for Printers, (12/93) specifically addresses the taxability of tangible personal property and services commonly sold by printers. Among the services listed in Publication 842 as subject to sales tax is printing of envelopes, drawings, and office supplies, unless purchased for resale. Since Petitioner is purchasing the printing services in the course of its business operations to produce the first day covers for sale, these printing services are exempt from sales tax under Section 1105(c)(2) of the Tax Law. To avail itself of the exclusion from sales tax as a sale for resale, Petitioner must supply the vendor with a properly completed resale certificate (Form ST-120). Petitioner would collect applicable sales tax upon sale of the first day covers to its customers, unless they are delivered to a destination outside of New York State.

Publication 842 classifies film negatives, color separations and artwork used by printers as equipment used directly in production. Section 1115(a)(12) of the Tax Law exempts from sales tax purchases of property used directly and predominantly in production of tangible personal property for sale. Since the film negatives, color separations and artwork are used directly in the production of Petitioner's first day covers for sale, if more than 50% of this equipment's use is in the production phase, then the purchase of this equipment will qualify for exemption from sales and compensating use tax.

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It should be noted that the right to reproduce a photograph, painting, sketch or illustration is not a sale of tangible personal property and the purchase of this right is not subject to tax where the payment made is in the nature of a royalty to the grantor under the laws relating to artistic and literary property. Temporary possession by the client for the sole purpose of making the reproduction is not considered to be a transfer of possession which would convert the reproduction right into a taxable use. See Section 526.7(f) of the Sales and Use Tax Regulations.

DATED: July 31, 1998

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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