

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

TSB-H-81 (120) S
Sales Tax
June 15, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S801224A
PETITION NO. S801224B
PETITION NO. S801224C

On December 24, 1980 three Petitions for Advisory Opinion were received from Atlantic Flyway, Inc. and John A. Gambling Enterprises, Inc. d/b/a George Mead's New York, c/o Forman, Kingston, Kops & Dowd, Esqs., 290 Old Country Road, Mineola, New York 11501. The three Petitions are here consolidated for disposition.

The issues raised are whether Petitioner is required to register as a vendor under Article 28 of the Tax Law (Sales and Compensating Use Taxes) and, if so, whether sales tax is due upon the sales described below.

Petitioner publishes books in Connecticut, and has no place of business in New York. Petitioner sells books to customers in New York (1) by shipping books directly to retail customers, (2) by shipping books directly to vendors of books in New York, and (3) through a sales agent. In the last instance Petitioner's sales agent does the billing, collection, shipping (from a warehouse in Maryland) and bookkeeping with respect to the sales it makes, which are to vendors of books for purposes of resale. Petitioner's sales agent solicits sales in New York.

Article 28 of the Tax Law provides that every person who makes retail sales of tangible personal property in New York (which includes sales where the property is delivered to the customer in New York) is required to register with the Tax Commission and to collect the sales tax due with respect to such sales. Tax Law, §§1101(b)(8), 1131(1), 1132, 1134. However, special rules apply where such a vendor is located outside of New York. These rules are set forth in the Sales and Use Tax Regulations, as follows:

"(e) Interstate vendors. (1) A person outside of this State making sales to persons within the State, who solicits the sales in New York, as defined in subdivision (d) of this section, or who maintains a place of business as defined in subdivision (c) of this section, is required to collect the sales tax on the tangible personal property delivered in New York or the services performed in New York.

(2) A person making sales to his customers within the State, who has solicited such sales by the interstate distribution of catalogs or other advertising material by mail and who delivers the merchandise through the mail or by common carrier, and who neither maintains a place of business as defined in subdivision (c) of this section, nor solicits business as defined in subdivision (d) of this section, is not required to register as a vendor. However, if such person registers voluntarily he is under the same obligations as any other vendor." 20 NYCRR 526.10(e).

The "subdivision (d)" referred to in the foregoing reads, in relevant part, as follows:

"(d) Soliciting business. (1) A person is deemed to be soliciting business if he has employees, salesmen, independent contractors, promotion men, missionary men, service representatives or agents soliciting potential customers in the State.

JAMES H. TULLY, JR., COMMISSIONER LOUIS M. JACOBSON, DEPUTY COMMISSIONER
FRANK J. PUCCIA, DIRECTOR

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Example 1: An out of State company that has a sales representative contacting customers in the State is soliciting business and is a vendor." 20 NYCRR 526.10(d).

Inasmuch as Petitioner makes retail sales of tangible personal property to customers in New York and has an agent soliciting potential customers in New York, Petitioner must register as a vendor with the Tax Commission, collect sales tax where due, remit the same to the Tax Commission, and file sales tax returns. Sales tax is due on direct sales to retail customers. Sales tax need not be collected on sales to purchasers buying for the purpose of resale, but only where such purchasers provide Petitioner with properly completed Resale Certificates (form ST-120).

DATED: May 29, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau