

**New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division**

TSB-A-06(33)S
Sales Tax
December 29, 2006

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S050510B

On May 10, 2005, the Department of Taxation and Finance received a Petition for Advisory Opinion from Lewis Van Arnam, 881 7th Avenue, New York, New York 10019. Petitioner, Lewis Van Arnam, submitted additional information pertaining to the Petition on June 27, 2005.

The issue raised by Petitioner is whether services provided by a fashion stylist are subject to sales tax.

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

According to Petitioner, a fashion stylist is an individual commissioned to coordinate the acquisition and presentation of clothing, fashion accessories, props, and related merchandise for fashion photography. The merchandise is obtained by purchase, rental, or loan depending on the specifications of the assignment. The costs of purchasing or renting merchandise, as well as any expense incurred for assistants, messengers, taxis, or equipment rental (such as steamer, iron and ironing board, etc.) are passed on to the contracting client. Most of the time, the merchandise is rented. When merchandise is purchased, it is always permanently transferred to the client. The services of a fashion stylist are charged by a daily rate or project rate, on a freelance basis. A fashion stylist may be hired by a photographer or the client who will use the photographs (e.g., an advertising agency or a direct marketing catalog agency, etc). Generally, photographic images created are for use in magazines, catalogs, or similar advertising outlets.

Applicable law and regulations

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(3) Receipt. The amount of the sale price of any property and the charge for any service taxable under this article . . . and also including any charges by the vendor to the purchaser for shipping or delivery . . . regardless of whether such charges are separately stated in the written contract, if any, or on the bill rendered to such purchaser and

regardless of whether such shipping or delivery . . . is provided by such vendor or a third party. . . .

(4) 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, or (B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3), (5), (7) and (8) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax. . . .

(5) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume . . . for a consideration. . . .

(6) Tangible personal property. Corporeal personal property of any nature. . . .

Section 1105(a) of the Tax Law imposes sales tax, in part, upon:

The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

Section 1105(c) of the Tax Law imposes sales tax upon the receipts from every sale, except for resale, of certain enumerated services.

Section 1132(a)(1) of the Tax Law provides:

Every person required to collect the tax shall collect the tax from the customer when collecting the price, amusement charge or rent to which it applies. If the customer is given any sales slip, invoice, receipt or other statement or memorandum of the price, amusement charge or rent paid or payable, the tax shall be stated, charged and shown separately on the first of such documents given to him. The tax shall be paid to the person required to collect it as trustee for and on account to the state.

Section 1134(a)(1) of the Tax Law provides, in part:

(i) Every person required to collect any tax imposed by this article . . . commencing business or opening a new place of business, (ii) every person purchasing or selling tangible personal property for resale commencing business or opening a new place of business . . . shall file with the commissioner a certificate of registration, in a form prescribed by the commissioner, at least twenty days prior to commencing business or

opening a new place of business or such purchasing, selling or taking of possession or payment, whichever comes first. . . .

Section 525.2(a)(3) of the Sales and Use Tax Regulations provides:

Except as specifically provided otherwise, the sales tax is a "destination tax." The point of delivery or point at which possession is transferred by the vendor to the purchaser, or the purchaser's designee, controls both the tax incidence and the tax rate.

Section 526.6(c)(7) of the Sales and Use Tax Regulations provides, in part:

Tangible personal property purchased for use in performing a service not subject to tax is not purchased for resale.

Example 10: A shoe repairman purchases leather to be used for resoling shoes. His purchase of the leather is not a purchase for resale, even though the leather will be transferred to the customer in connection with the performance of the service because the service he is performing is not taxable.

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

Transfer of possession. (1) Except as otherwise provided in paragraph (3) of this subdivision, a sale is taxable at the place where the tangible personal property or service is delivered, or the point at which possession is transferred by the vendor to the purchaser or his designee. . . .

Section 527.1(b) of the Sales and Use Tax Regulations provides, in part:

Taxable and exempt items sold as a single unit. When tangible personal property, composed of taxable and exempt items is sold as a single unit, the tax shall be collected on the total price.

Opinion

According to Petitioner, a fashion stylist coordinates the acquisition and presentation of clothing, fashion accessories, props and related merchandise for fashion photography. The stylist's costs of purchasing or renting merchandise, as well as any expenses incurred for assistants, messengers, taxis, etc., are passed on to the client. The services of a stylist are charged by a daily rate or project rate. A fashion stylist may be hired by a photographer or the client who will use the photographs (e.g., an advertising agency or a direct marketing catalog agency).

The service provided by a fashion stylist, as described above, is not one of the services enumerated under section 1105(c) of the Tax Law. Therefore, such service is not subject to sales tax. See *Jeffrey J. Coren CPA*, Adv Op Comm T&F, December 30, 1998, TSB-A-98(92)S.

However, Petitioner has stated that in conjunction with providing services a fashion stylist also provides clothing, fashion accessories, props, and related merchandise, as needed to produce the desired effect in the photographs. A fashion stylist rents many of the items to be used for a particular assignment, but also may purchase some items. Petitioner states that any items purchased are permanently transferred to the client. The provision of such items by a fashion stylist to a client may be considered to be the sale of tangible personal property subject to New York State and local sales taxes under section 1105(a) of the Tax Law. Items that are transferred to the client or become a component part of tangible personal property transferred to the client are considered to be a sale of tangible personal property. The sale of such items including any expenses incurred in conjunction with the transfer of the tangible personal property is subject to tax under section 1105(a) of the Tax Law, unless a client qualifies for an exemption and provides the fashion stylist with the appropriate exemption document. However when the fashion stylist delivers tangible personal property to a location outside of New York State, the sale of such property is not subject to New York State or local sales tax regardless of the customer's business location. See sections 525.2(a)(3) and 526.7(e) of the Sales and Use Tax Regulations.

A fashion stylist may make exempt purchases of tangible personal property if the property is purchased *exclusively* for resale as such or as a physical component part of tangible personal property. See section 1101(b)(4)(i) of the Tax Law. To make purchases for resale, the fashion stylist is required to register as a vendor and to collect and remit sales tax on its sales of taxable items. See sections 1132 and 1134 of the Tax Law.

Items that are not transferred to a client (such as irons and ironing boards to press clothing worn by the models, etc.) are considered to be used by the fashion stylist to perform the stylist's required services. This is the case even though the costs of such property are passed through to and reimbursed by a client. The purchase or rental of such items by the fashion stylist is subject to the sales tax imposed by section 1105(a). Further, property purchased by the fashion stylist for use in performing nontaxable services may not be purchased for resale, even when the property will be transferred to the client in conjunction with the performance of the service. See section 526.6(c)(7) of the Sales and Use Tax Regulations.

When tangible personal property composed of taxable and exempt items is sold as a single unit, sales tax must be collected on the total price. See section 527.1(b) of the Sales and Use Tax Regulations. This rule is likewise applicable to sales of taxable and exempt services and sales of services combined with sales of tangible personal property. See *PricewaterhouseCoopers LLP*, Adv Op Comm T&F, March 25, 2003, TSB-A-03(11)S; *Salomon & Leitgeb CPA's, LLP*, Adv Op Comm T&F, July 23, 1997, TSB-A-97(44)S. Therefore, when a

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fashion stylist sells clients a single unit consisting of taxable items combined with nontaxable services, the entire amount charged to the client is taxable. If the fashion stylist's services are separately available apart from the tangible personal property sold by the fashion stylist and the charges for such services and property are reasonable in relation to the value of the services and property and separately stated on the customer invoice, the receipt for the tangible personal property is taxable and the charges for services are not taxable. See *J.P. Molyneux Studio Ltd.*, Adv Op Comm T & F, May 22, 1996, TSB-A-96(31)S.

DATED: December 29, 2006

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