

New York State Department of Taxation and Finance  
**Office of Counsel**  
**Advisory Opinion Unit**

TSB-A-10(43)S  
Sales Tax  
September 22, 2010

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S100615A

On June 15, 2010, the Department of Taxation and Finance received a Petition for Advisory Opinion from Petitioner, [REDACTED]. Petitioner asks whether its receipts from printing and mailing patient billing statements, as described below, are subject to sales tax.

We conclude that Petitioner's receipts are subject to sales tax, provided that separately stated, reasonable charges made for printed materials that are mailed to addresses outside New York State, other than the outside mailing envelopes, would not be subject to tax.

**Facts**

Petitioner is a New York corporation that produces, sells, and services medical practice management computer systems to doctors' offices. Petitioner, under a separate optional agreement, also prints and mails patient billing statements for its customers. Pursuant to the optional agreement, Petitioner's customer (a doctor's office) selects patients to be billed using the medical billing software system Petitioner licenses to its customer. The customer uses the software system to create an electronic file with patients' billing information, and sends the file electronically to Petitioner's server. Petitioner's computers run a mathematical computation and analysis program on the file to ensure proper format and content, and to check for erroneous or corrupt data. A file compression program then combines the files from different customers into a compressed file. Petitioner transmits the compressed file to a third party printer-mailer. The third party runs a decompression program on the file, converts the customer files into a single continuous print file, and verifies the integrity of the print file. The third party then prints the patient bills, inserts the bills into mailing envelopes, applies postage, and mails the bills to the customers' patients. Petitioner provides generic printed invoice paper and envelopes to the third party to print and mail the bills. Petitioner pays the third party for printing and mailing the bills, and for postage. Petitioner, in turn, bills its customers for its services, including processing, printing, paper supplies, and postage.

Petitioner submitted a sample contract in which Petitioner agrees to perform printing and mailing for the customer with respect to the customer's patient bills. Under the contract, Petitioner charges a fixed price per patient billing statement, plus an additional amount for additional pages included in the mailing.

**Analysis**

Petitioner contracts with its customers to print and mail their patient billing statements. When Petitioner charges its customers for billing statements produced from the customers' electronic files, Petitioner is charging its customers for the sale of printed material. The envelopes provided by Petitioner are also included in its charges to its customers. These sales of printed material and envelopes are sales of tangible personal property subject to sales tax under Tax Law §1105(a). See *Werthan Industries, Inc.*, Adv Op Comm T&F, December 4, 1997, TSB-A-97(73)S; *MGI Output Technologies, Inc.*, Adv Op Comm T & F, December 31, 1996, TSB-A-96(77)S.

The sales tax is a "destination tax." The point of delivery controls both the tax incidence and the tax rate. See 20 NYCRR §525.2(a)(3). Accordingly, Petitioner's sales of printed materials (i.e., patient billing statements and return envelopes included in the mailing) will be subject to sales tax if the printed materials are mailed to New York addresses. Petitioner's sales of the printed materials will not be taxable if they are mailed to addresses outside New York. However, outside mailing envelopes used to mail printed matter from a post office located in

New York are fully taxable at the location from which they are mailed, because use of those envelopes occurs in New York State, even though all or a portion of their contents may be subject to tax or exempt, based on mailing destination. Petitioner must maintain records showing the destinations of all printed materials mailed to persons in New York State and of the materials mailed to persons outside New York State. Petitioner must collect sales tax on its entire charges to customers for printed materials, unless Petitioner separately states a reasonable charge on invoices to its customers for those patient billing statements and any return envelopes included in the mailing envelope that are mailed to addresses outside New York. *See Collection and Reporting Instructions for Printers and Mailers*, Publication 831 (5/10); *Werthan Industries, supra*; *MGI Output Technologies, supra*.

Charges for the services of sorting printed material to prepare for mailing, folding printed material and inserting it in envelopes, sealing the envelopes, affixing postage or metering mail, bagging and mailing the printed material, and the cost of postal charges are not subject to sales tax if those charges are reasonable and separately stated from the charges for taxable services on the customer's bill. The charges for these non-taxable services may be combined in a single amount under the designation of "non-taxable mailing" or "exempt services" if the invoice includes an itemized list of the exempt services provided. *See George Silver*, Adv Op St Tx Comm, April 24, 1986, TSB-A-86(15)S; *Morton L. Coren, P.C.*, Adv Op Comm T & F, March 6, 1997, TSB-A-97(12)S; *Werthan Industries, supra*. However, if Petitioner's invoices to its customers do not separately state reasonable charges for these "non-taxable mailing" or "exempt services" from taxable charges, the entire amount Petitioner charges its customers will be taxable.

Petitioner pays a third party printer-mailer for printing and mailing the printed material, and for postage. Because Petitioner provides the invoice paper and envelopes, the third party is performing printing or imprinting services for Petitioner under Tax Law §1105(c)(2) rather than selling tangible personal property. *See Werthan Industries, supra*. Petitioner's purchases of the printing or imprinting services are excluded from tax as purchases for resale, because Petitioner resells the printed material to its customers. Petitioner, if registered for sales tax purposes, should provide the third party with a properly completed resale certificate (Form ST-120) within 90 days of the rendition of the services in order to purchase the services exempt from sales tax. *See Tax Law*, §1132(c); 20 NYCRR §532.4. Separately stated, reasonable charges by the third party to Petitioner for the "non-taxable mailing" or "exempt services" discussed above and for postage are not taxable.

The billing statements and mailing envelopes, and any return envelopes that may be included in the mailings, are not promotional materials as defined in Tax Law §1101(b)(12). Thus, the exemptions applicable to promotional materials in Tax Law §1115(n) are not applicable here.

DATED: September 22, 2010

/S/  
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DANIEL SMIRLOCK  
Deputy Commissioner and Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.