

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

TSB-A-86 (33)S
Sales Tax
September 3, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S860422A

On April 22, 1986, a Petition for Advisory Opinion was received from Master Furriers Guild of America, Inc., 101 West 30th Street, New York, New York 10001.

Petitioner, a trade association, conducts one trade show of three days duration each year. The issue raised is whether, pursuant to the Sales Tax Law and Regulations, Petitioner or the renter of the exhibition space (landlord) or both are promoters with respect to this show.

Section 1131(5) of the Tax Law describes a "Promoter" as:

...any person who, either directly or indirectly, rents, leases or grants a license to use space to any person for the display for sale or for the sale of tangible personal property or services subject to tax, at more than three shows during the calendar year, or who operates more than three shows during the calendar year. For purposes of determining whether three shows have been held, the conduct of an activity described in subdivision six on one day alone or on a series of up to seven consecutive days shall be deemed to constitute a single show.

In section 1131(6) of the Tax Law, a "Show" is stated to include:

...a flea market, craft show, antique show, coin show, stamp show, comic book show, fair and any similar show, whether held regularly or of a temporary nature, at which more than one vendor displays for sale or sells tangible personal property or services subject to tax.

Regulation Section 533.1(c) explains further:

(2). . . .

(i) For purposes of determining the existence of a show, the permanent nature of the premises or structure in which the activity is held is not relevant. Instead, it is the transient nature of the vendors which is relevant. Accordingly, when there are two or more vendors operating on the same premises, and two or more vendors have leases or licenses to use such premises for a period of less than one year or where the leases or licenses to use may be cancelled on notice of less than 30 days, then a show is presumed to exist for all purposes of this Part. Another fact which indicates the existence of a show is where the vendors regularly remove their merchandise from the premises at the close of each business day.

(ii) If no taxable tangible personal property or services are displayed for sale or sold, then the activity is not a show for purposes of this subdivision.

(iii) Sales of food and drink for consumption on the premises, although taxable, will not be considered for purposes of determining the existence of a show. Further, admission charges for games of chance or skill, like those typically operated on a carnival midway, although taxable, will not be considered for purposes of determining the existence of a show.

(3). . . A person may be a promoter with respect to show vendors operating on his premises, and at the same time not a promoter with respect to vendors who have permanent places of business on the same premises. . . If there is more than one person involved in the organization or operation of a show who is within the definition of promoter, then all such persons must file a single notice of show and application for show permit as co-promoters.

Example 1: A, the owner of the X shopping mall, leases an area in the mall to B for the purpose of holding a flea market on each of five weekends during the year. B intends to sublease space to individual show vendors. If neither A nor B is involved in organizing or operating any show other than at the X shopping mall, then, after the third weekend the flea market is held, both A and B are promoters subject to this subdivision. While A, the owner of the X mall, is a promoter with respect to the show vendors participating in the flea market, A is not a promoter with respect to the permanent vendors of the X mall.

Example 2: A, the owner of the X shopping mall, leases area in the mall to B for the purpose of holding a flea market on the first weekend of July. B intends to sublease portions of the mall area to individual show vendors. A is not involved in organizing or operating any other show during the calendar year. B, however, will operate similar shows on three weekends during June at a location other than the X shopping mall. With regard to the flea market at the X shopping mall, A is not a promoter, but B is a promoter subject to this subdivision.

Promoters must file a notice of show and an application for show permit 10 days prior to the opening of the fourth show.

Publications of the Department of Taxation and Finance offer additional interpretations of the Tax Law and Regulations as follows: "The promoter organizes or operates a show by granting the use of a location." (Sales Tax Information for Show Vendors and Promoters, Publication 815 [3/85]).

"Owners or renters of parking lots, shopping malls, hotels, or other real property at which shows are held and organizers of shows . . . are promoters." (Information for Promoters, Form TP-375.3 [3/84]).

"After the third . . . show during the calendar year held at the same location or operated or sponsored by the same individual or organization, the operator, sponsor or site owner will be required to comply with the show promoter requirements of the Sales and Use Tax Law." (Technical Services Bureau Memorandum, Show Promoter Requirements as They Apply to Farmers' Markets, July 10, 1980, TSB-M-80(8)S).

Accordingly, a "Permit to Operate a Show" (Form PR-169.2 [12/84]) is required for the fourth and all subsequent shows held during a calendar year at the same premises, and for the fourth and all subsequent shows in a calendar year located at different sites, but managed by the same promoter.

Inasmuch as Petitioner conducts only one trade show on three consecutive days during a calendar year, it is not a promoter for the purposes of the Sales Tax Law. The landlord, if he has provided space for at least three prior shows (see Regulation 533.1(c), supra,) in the year, is deemed the show promoter who must comply with the requirements stated in the Sales and Use Tax Regulations. These are summarized as follows:

1. To obtain a show permit for the fourth and each subsequent show in a calendar year (Permit to Operate a Show, Form PR-169.2), and to prominently display it at the main entrance to the show.
2. To allow only registered vendors who have properly posted their certificate of authority at their show booth to display or sell goods subject to sales tax.
3. To file a Report of Show (Form TP-375.2) listing names, addresses, New York sales tax identification numbers, and rental charges per month for each participant. The report should list separately vendors claiming exclusively tax exempt sales.
4. To maintain supporting records.

20 NYCRR 533.1(c), (d); 533.2(e)(7); 533.3(i).

To fulfill its obligations under the law, the landlord must ask the Petitioner to furnish the show vendor information (item 3. above) necessary to file the Report of Show.

Although an organization conducting only one yearly trade show is not required to perform any of the above quoted duties of a promoter, each exhibitor of tangible personal property at the show must obtain and visibly post a Certificate of Authority for Show Vendors, Form DTF-860C.

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Vendors with a place of business in the State, where they regularly sell the type of merchandise to be displayed at the show, will be already registered as vendors with the Tax Department. Therefore, they can either request the issuance of a duplicate copy of their Certificate of Authority (Form TP-153A) or apply for a separate Certificate of Authority for Show Vendors.

Vendors not already registered as sellers of the same type of goods they wish to display at the show, must obtain such a certificate by filing Form DTF-860ABC with the New York State Taxpayer Assistance Bureau. (20 NYCRR 533.2(b)). Additionally, each exhibitor is required to give to the show promoter (here the landlord) its name, address and New York State sales tax identification number. See New York State Department of Taxation and Finance Publication 815, (3/85), Sales Tax Information for Show Vendors and Promoters, for details.

DATED: September 3, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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