

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

TSB-A-87(19)S
Sales Tax
May 5, 1987

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO: S861121A

On November 21, 1986, a Petition for Advisory Opinion was received from Stibo Datagraphics Inc., 400 Franklin Road, Marietta, Georgia 30067.

The issue raised is whether Petitioner's sales of imprinted film which is used to print catalogs is subject to sales tax.

Petitioner is a commercial typesetter that specializes in computerized typesetting with detail graphics. The primary use of Petitioner's service is in preparing and maintaining catalogs or the like for customers. Printed material and graphics are typically entered via keyboard and, using proprietary software, efficiently organized to suit the customer's preference. Once complete, an imprinted film is produced for use by a printer in making printed copies. However, all sales are made directly to the customer, not to the printer.

Petitioner asserts that it is selling a typesetting service to its customers and not tangible personal property. It is uncertain as to the intended results of the following example from Technical Services Bureau Memorandum 79(7.1)S.

Example 1. An advertising agency purchases typography. The typography is to be used in the printing of a client's annual report. Since the annual report is not being produced for sale, the typography is subject to the state and local tax.

Section 1105(a) of the Tax Law imposes a tax on the sale of tangible personal property unless otherwise exempt. Tangible personal property is defined in Section 1101(b)(6) of the Tax Law and includes corporeal personal property of any nature.

The film produced by Petitioner is tangible personal property within the meaning of section 1101(b)(6) of the Tax Law. When Petitioner sells film to its customers, it is selling tangible personal property. It is not merely selling its typesetting service.

Section 1132(c) of the Tax Law provides that it shall be presumed that the receipts from all sales of tangible personal property are subject to tax until the contrary is established. Petitioner has supplied no information which would indicate whether the film produced and sold by Petitioner will be used for exempt purposes by Petitioner's customers. Such would be the case, for instance, if the film produced by Petitioner is used to produce catalogs which are sold by Petitioner's customers. In that event, Petitioner's customer would be required to present to Petitioner a properly completed Exempt Use Certificate (Form ST-121) to establish that such film is exempt from tax.

TSB-A-87(19)S
Sales Tax
May 5, 1987

Accordingly, the sale of film by Petitioner to its customers is subject to tax unless a customer presents to Petitioner a properly completed exemption certificate.

DATED: May 5, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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