

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

TSB-A-88(46)S
Sales Tax
September 13, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S880617A

On June 17, 1988, we received a Petition for Advisory Opinion from Freed Maxick Sachs and Murphy, P.C., 800 Liberty Building, Buffalo, New York 14207.

The issues raised are whether the advertising agency or printer hired by Petitioner is required to charge sales tax and is Petitioner required to pay use tax under the following circumstances:

1. the advertising agency or printer sends the printed material to Petitioner and Petitioner mails it to its customers both within and outside of New York State.
2. the advertising agency or printer mails the printed material directly to Petitioner's customers both within and outside of New York State.

Petitioner hires advertising agencies and printers to prepare advertising, catalogs, and other literature (promotion material) for distribution at no charge to customers, businesses, and individuals.

"Promotion materials" consist of any tangible personal property which is given without charge by a manufacturer, wholesaler, or distributor to a vendor for distribution to a prospective or current customer as an inducement or reward for a purchase and any literature or printed matter given without charge for distribution or use to advertise, induce, or facilitate a sale Examples of such items include...

Advertising literature, catalogs. (New York State and Local Sales Tax Information for Printers, Publication 842).

Issue 1

In the situation where the advertising agency or printer sends the "promotion materials" to Petitioner within New York State and Petitioner subsequently mails them to individuals on a mailing list which includes addresses both within and outside of New York State, then the advertising agency or printer is required to collect the sales tax on the entire charge for such promotional materials. The sale by the advertising agency or printer to Petitioner is complete and tax is due at the point of delivery to Petitioner. However, Petitioner is eligible to apply for a credit or refund of the tax paid on that portion of the printed matter that is not otherwise used by Petitioner within New York but is reshipped to points outside New York for use outside New York. (Tax Law section 1119(a)(2)).

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Issue 2

In the event that the advertising agency or printer sends the "promotion materials" directly to customers on Petitioner's mailing list which includes addresses both within and outside New York State, the printer is required to collect the sales tax only on the mailings to addresses within New York State. Technical Services Bureau Memorandum (TSB-M-79(9)S).

Moreover, Petitioner (in Issue 1) or the printer (in Issue 2) must maintain records showing the portion of the matter mailed to persons outside New York State and destinations of all matter mailed to persons within New York State according to the New York Collection and Reporting Instructions for Printers and Mailers, Form ST-152. These type of records include postage fees and mailing list records.

DATED: September 13, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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