

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

TSB-A-91 (37)S
Sales Tax
April 29, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910311A

On March 11, 1991, a Petition for Advisory Opinion was received from Neil A. Harrison, 912 Eileen Terrace, Woodmere, New York 11598.

The issue raised by Petitioner, Neil A. Harrison, is whether shipping and handling charges paid in connection with the purchase of compact discs through a mail order service are subject to State and local sales and use taxes.

Petitioner belongs to Columbia House, a club located in Indiana, for the purchase of musical recordings on cassette tapes and compact discs. Petitioner periodically receives brochures from Columbia House which describe current available selections.

Petitioner occasionally orders compact discs, which are sent to him via U.S. Mail. Petitioner is billed by Columbia House for the compact discs, shipping and handling charges and New York State sales tax. The bill separately states the cost of each compact disc and a combined charge for shipping and handling of each compact disc and computes sales tax on the total of the cost of the compact disc and shipping and handling.

Section 526.5 of the Sales and Use Tax Regulations provides, in part, as follows:

* * *

(g) Transportation. (1) The cost of transportation of tangible personal property, sold at retail, which is separately stated in written contract, if any, and on the bill rendered to the purchaser is excluded from the receipts subject to the tax.

(2) To qualify for the exclusion transportation costs must be for the delivery of the tangible personal property to the purchaser. Any charge made to a retail purchaser, whether labeled transportation, handling or some other designation, which represents the cost of transportation between a supplier, manufacturer, warehouse, or catalog or other distribution point, and the vendor's place of business constitutes part of the receipt subject to tax.

Technical Service Bureau Memorandum, TSB-M-84(13)S, concerning the "Taxable Status of Charges for Transportation and Handling of Tangible Personal Property" provides, in part, as follows:

Section 1101(b)(3) of Article 28 of the Tax Law provides that a vendor's charge to a retail purchaser for transporting tangible personal property to the purchaser's point of delivery is to be excluded from receipts subject to tax when such charge is

separately stated in the written contract, if any, and on the bill given to the purchaser. Charges are deemed to be separately stated if they can be computed from information appearing on the bill given to the purchaser (Regulation Section 526.5(g)(3)).

* * *

Handling costs are also part of the receipt subject to tax. If transportation, postage, shipping or similar charges that would otherwise be exempt are combined with handling charges in a single amount, the entire charge becomes subject to sales tax.
(Emphasis added)

Example:

- (5) A New York State resident living in a 7% taxing jurisdiction purchases merchandise from a mail order house. The mail order house charges the customer a combined amount for postage and handling. The resident should be billed as follows:

Cost of taxable merchandise	\$260.00
Postage and handling	<u>10.00</u>
Amount subject to tax	\$270.00
Sales tax at 7%	<u>18.90</u>
Total due	<u>\$288.90</u>

Accordingly, since Columbia House combines the charges for shipping and handling into a single amount, Petitioner must pay sales tax on the entire amount in accordance with Section 526.5(g) of the Sales and Use Tax Regulations and TSB-M-84(13)S.

DATED: April 29, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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