

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

TSB-A-92 (46) S
Sales Tax
June 16, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920318A

On March 18, 1992 a Petition for Advisory Opinion was received from Morton L. Coren, P.C., 638 Meadow Court, Westbury, New York 11590.

The issue raised by Petitioner, Morton L. Coren, P.C., is whether marking services are one of the enumerated services subject to sales tax, and if so, are they exempt if performed upon tangible personal property held for sale.

According to the Petitioner the service of ticketing merchandise is called a "marking service." The service may be provided by the manufacturer, but is often provided by a company that performs other garment handling services as well.

Companies use a marking service to attach ticket labels to garments or other merchandise. The primary reasons for this type of service to persist is the relatively high price of the item. Since the merchandise is easily damaged, special handling is required to insure that the tickets are attached correctly.

The tickets includes information of value to the customer in addition to price including size, color store/brand name, mens/women/unisex identification and return information. The tickets are attached to garments or other merchandise for sale and remain with the items after the purchaser obtains possession the merchandise. The tickets have no intrinsic value.

A multi-part ticket was in use by many large retail stores at one time. Part of the ticket was removed at the time of sale and retained by the vendor to keep track of the merchandise sold in more detail than was possible on a cash register (style, color, seasonal information). Part of the ticket was also removed during inventory, for tallying on special machines.

Recent developments in computer technology have resulted in the development of point-of-sale (POS) terminals. These terminals have replaced cash registers at most large retail stores. The details of each sales transaction are entered into a terminal (Point-of-Sale cash register) at the time of sale. This information then is electronically transmitted to a central computer for processing.

POS terminals have enabled retailers to eliminate many laborious steps formerly necessary to keep track of sales by item, customer charge information, inventory levels and other relevant data. Multi-part price tickets are no longer used for this reason. With the development of the POS terminals came single part "price" tickets. These tickets are permanently attached by a special device and cannot easily be removed without destroying the device. The ticket remains with the garment after it is sold.

Section 1105(c) of the Tax Law provides, in part, that the receipts from every sale, except for resale, of the following services shall be taxable:

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(2) [p]rocessing. . .tangible personal property, performed for a person who furnishes the tangible personal property, not purchased for resale, upon which such services are performed; and

(3) installing Tangible personal property. . .or maintaining, servicing. . .tangible personal property, not held for sale in the regular course of business.

In considering the question of the taxability of services performed upon containers holding tangible personal property for sale the Appellate Division held in Niagara Lubricant Company v. State Tax Commission, 120 AD 2d 885, that the contents of the containers were sold but not the containers themselves and thus the services performed upon the containers were subject to sales tax. Similarly in the instant case it is the merchandise and not the tickets that are sold.

Accordingly the service of affixing ticket labels to merchandise is one of the services subject to sales tax under section 1105(c) of the Tax Law. In addition, the service of affixing the tickets to the merchandise may not be purchased for resale since the tickets are not held for sale. (See: Morton L. Coren, Adv Op Comm of T&F, March 16, 1992, TSB-A-92-23(S))

DATED: June 16, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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