

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

TSB-A-92(52) S
Sales Tax
June 30, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920428B

On April 28, 1992, a Petition for Advisory Opinion was received from Dale System Incorporated, 1101 Stewart Avenue, Garden City, New York 11530.

The issues raised by Petitioner, Dale System Incorporated, are:

1. Whether the return of merchandise for a complete reimbursement, purchased as part of Petitioner's shopping service, is subject to State and local sales and use taxes.
2. Whether shipping charges on merchandise returned to locations outside New York State as part of Petitioner's shopping service are subject to State and local sales and use taxes.
3. Whether shipping charges on merchandise purchased outside New York and returned to locations inside New York as part of Petitioner's shopping service are subject to State and local sales and use taxes.

Petitioner is a private detective agency involved in performing a shopping service for its clients. In performance of this service, Petitioner sends professional shoppers into retail establishments to make cash purchases of merchandise sold by that store at the store's registers in order to grade and report on the handling of the transaction. The object is to determine if the cashier has properly recorded the sale.

The purchased items are returned to Petitioner's office by the shoppers and then shipped by Petitioner to an address furnished by its client. No invoices or reports accompany the returned merchandise. The invoices and reports are sent under separate cover at a later date. Charges for the detective service and for the amount to be reimbursed are separately stated on the invoices.

Section 1105(c)(8) of the Tax Law as enacted by Chapter 190 of the Laws of 1990 imposed sales tax upon:

Protective and detective services, including, but not limited to, all services provided by or through alarm or protective systems of every nature, including, but not limited to, protection against burglary, theft, fire, water damage or any malfunction of industrial processes or any other malfunction of or damage to property or injury to persons, detective agencies, armored car services and guard, patrol and watchman services of every nature other than the performance of such services by a port watchman licensed by the waterfront commission of New York harbor, whether or not tangible personal property is transferred in conjunction therewith.

Section 525.2(a)(3) of the Sales and Use Tax Regulations provides:

The sales tax is a "destination tax," that is, the point of delivery or point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate.

Section 1105(c)(8) of the Tax Law is substantially similar to Section 1212-A(b)(2)(i)(B) of the Tax Law allowing New York City to impose sales tax on protective and detective services.

New York State Department of Taxation and Finance, Sales Tax Information on Selected Services in New York City, Publication 849 (1/89) in listing protective and detective services subject to the New York City sales tax states at pages 7 and 8:

Q. Are unannounced and undisclosed investigative inspections of businesses, for a business owner to whom a report is provided, considered taxable services?

A. These are detective services and when a report is delivered to a client in New York City, it is subject to the 4% sales tax imposed by New York City.

Q. If a private detective is hired by a New York City client to perform investigative services in Arizona, are his services subject to the 4% sales tax imposed by New York City?

A. Yes. Investigative work is taxable when the bill is rendered to a client in New York City and delivery of the report takes place in New York City, and not according to where the services are rendered.

Q. If an investigative report, due to its extreme confidential nature, is sent to an executive's home outside New York City, but the main office is located in New York City, is this report subject to the 4% sales tax imposed by New York City?

A. No.

Q. If the same report is sent to an executive's home in New York City, although the work is done outside the city limits and the main office is outside New York City, is the report subject to the 4% sales tax imposed by New York City?

A. Yes.

Section 534.6 of the Sales and Use Tax Regulations provides, in part, as follows:

Reg. Sec. 534.6. Refunds and credits by reason of cancelled sales and returned merchandise.-- (Tax Law, Sec. 1132(e), 1139(e)). (a) Cancelled sales and returned merchandise. (1) Exclusion from return. Where a contract of sale has been cancelled or the property returned within the reporting period in which the sale was made, a vendor of tangible personal property or services. . .may exclude such receipts. . .from his sales and use tax return.

(2) Credit where tax previously remitted. Where a contract of sale has been cancelled or the property returned and the tax collected thereon refunded to the customer, and such tax had been paid and reported on a return by the vendor of tangible personal property. . .an application for refund or credit for the tax paid upon such receipt. . .shall be filed with the State Tax Commission within three years from the date when the tax was payable by such person to the Tax Commission. The applicant may, as part of the application for credit, take the credit on the return which is due coincident with or immediately subsequent to the time such application is filed. The application for refund or credit shall be subject to the provisions of subdivisions (a), (b), and (c) of section 1139 of the Tax Law and section 534.2 of this Part.

Charges for reports by a detective agency sent to a client located outside of New York State, such as attorneys located in New Jersey, are not subject to sales tax pursuant to Section 525.2(a)(3) of the Sales and Use Tax Regulations, Stanley Greenfield, Adv Op Comm T&F, July 24, 1990, TSB-A-90(35)S.

Accordingly, concerning issue "1", pursuant to Section 534.6 of the Sales and Use Tax Regulations the vendor of merchandise being returned may treat such return as a cancelled sale. Therefore, the amount of reimbursement requested by Petitioner for the returned merchandise is not subject to State and local sales and use taxes.

Regarding issues "2" and "3", the performing of a shopping service as described herein constitutes a protective and detective service pursuant to Section 1105(c)(8) of the Tax Law. Shipping charges to return merchandise purchased in performing Petitioner's detective service would be deemed a component of such protective and detective service. Pursuant to Section 525.2(a)(2) of the Sales and Use Tax Regulations, Publication 849 and Stanley Greenfield, supra, if the reports relating to the handling of merchandise purchases are sent to locations outside New York State such

TSB-A-92(52) S
Sales Tax
June 30, 1992

reports are not subject to sales and use taxes. Sales tax must be collected on reports sent to locations within New York State. The locations where the reports are sent will determine the taxability of the shipping charges for the returned merchandise.

DATED: June 30, 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.