

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

TSB-A-93 (60) S  
Sales Tax  
November 22, 1993

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S930823B

On August 23, 1993 a Petition for Advisory Opinion was received from Jack Wong c/o Grant Thornton, 7 Hanover Square, New York N.Y. 10004.

The issues raised by Petitioner, Jack Wong c/o Grant Thornton, are:

1. Whether the average rate of \$1.04 shipping charges per package used by Petitioner's corporate clients in determining exempt shipping charges falls within an industry prevailing rate for mail order house shipping charges.

2. Whether the shipping charges are excluded from sales tax for periods occurring prior to September 1, 1991.

Petitioner's corporate clients are engaged in the mail order business. Promotional materials are sent to customers on a regular and systematic basis. The promotional materials include order forms and return envelopes. The order forms, when completed by customers, show separate amounts for each category of merchandise ordered, a separate amount for shipping charges which are generally based on the weight and value of the merchandise ordered, and include sales tax rates whereby the customer computes the amount of sales tax payable.

Petitioner's clients recorded their income based on daily receipts which were the combined receipts for merchandise sold, shipping charges and sales taxes. No separate record was kept indicating the specific shipping charge for each individual order.

Prior to September 1, 1993 Section 1101(b)(3) of the Tax Law stated, in part:

Receipt. The amount of the sale price of any property and the charge for any service taxable under this article ... and excluding the cost of transportation of tangible personal property sold at retail where such cost is separately stated....on the bill rendered to the purchaser.

Section 526.5(g) of the Sales and Use Tax Regulations states, in part:

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

(2) To qualify for the exclusion transportation costs must be for the delivery of the tangible personal property to the purchaser ....

(3) Transportation charges shall be deemed to be separately stated if they can be computed from information appearing on the bill.

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Since an Advisory Opinion merely sets forth the applicability of pertinent statutory and regulatory provisions to a "specified set of facts", Tax Law, section 171, subd. twenty-fourth; 20 NYCRR 901.1(a), it is not within the scope of an Advisory Opinion to determine questions of fact such as whether or not a rate of \$1.04 shipping charges per package used by Petitioner's corporate clients falls within an industry prevailing rate for mail order house shipping charges.

Transportation charges which were separately stated on bills presented to customers for sales of tangible personal property occurring prior to September 1, 1991 would qualify for the exclusion from tax provided under Section 1101(b)(3) of the Tax Law and Section 526.5(g) of the Regulations. There was no provision in the statute or regulations permitting the use of an average industry prevailing rate to determine the amount of the exempt shipping charges.

It is noted that Section 1101(b)(3) of the Tax Law was amended, effective September 1, 1991, to exclude the language "and excluding the cost of transportation of tangible personal property sold at retail where such cost is separately stated in the written contract, if any, and on the bill rendered to the purchaser." Accordingly, any shipping charges for taxable tangible personal property are considered to be subject to sales and use tax where the sale of such tangible personal property occurred on or after September 1, 1991.

DATED: November 22, 1993

/s/  
PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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