

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

TSB-A-94 (19)S
Sales Tax
April 25, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940303B

On March 3, 1994, a Petition for Advisory Opinion was received from Susan L. Wilson dba Co-op Slingers Door-to-Door, 37 Glendale Drive, Lancaster, New York 14686.

The issue raised by Petitioner, Susan L. Wilson dba Co-op Slingers Door-to-Door, is whether fees collected by Petitioner from her clients to cover the cost of having the client's advertising material typeset, printed, packed in door hanging bags and hung on doors in designated areas are subject to sales and use taxes.

Petitioner solicits advertisers (clients) to be included in mass door to door hangings (using 9 x 16 or 10 x 16 door hanging bags) in selected market areas. Upon acquiring a client, a written agreement is executed specifying the areas the client desires to be advertised in, whether the client will provide their own printed advertising and pay only a fee for packing and hanging of their material, or if the client will provide copy only. In cases where the client provide copy only, Petitioner delivers the copy to a local printer to be typeset and printed as per the client's instructions.

Some clients may select a co-op flyer, sharing the cost of the typesetting and printing with one other client, while others select a flyer size that promotes only their individual business. Upon approval of a proof, the desired number of ads are printed, and are packed up by Petitioner.

The printer, on its invoices to Petitioner, discloses the client's full name and the particular print job, itemized to a total. Such total is then paid by Petitioner. Subsequently the client's pay a fee to Petitioner to cover the cost of typesetting, printing, packing and hanging their advertisements. Petitioner purchases the door hanging bags, collates the participating client's ads, packs them in the bags and hangs them in the designated areas. Upon completion of the advertisement hanging, each client receives an area list, upcoming schedule and a finished copy of their printed advertisement.

Section 1105 of the Tax Law imposes sales tax upon:

- (a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

* * *

- (c) The receipts from every sale, except for resale, of the following services:

(1) The furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons, and excluding the services of advertising or other agents, or other persons acting in a representative capacity, and information services used by newspapers, radio broadcasters and television broadcasters in the collection and dissemination of news. (emphasis added)

Section 527.3 of the Sales and Use Tax Regulations provides, in part, as follows:

* * *

(b) Exclusions.

(5) Fees for the services of advertising agencies or other persons acting in a representative capacity are excluded from the tax. Advertising services consist of consultation and development of advertising campaigns, and placement of advertisements with the media without the transfer of tangible personal property. The furnishing of a personal report containing information derived from information services, by an advertising agency, to its client for a fee is not a taxable information service. However, if an advertising agency is engaged only for the purpose of conducting a survey or if a survey is separately authorized and billed to the customer, the taxability of such survey is determined in accordance with the provisions of subdivision (a) of this section and the other provisions of this subdivision. Sales of tangible personal property such as layouts, printing plates, catalogs, mailing devices or promotional handouts, tapes or films by an advertising agency for its own account are taxable sales of tangible personal property. (See section 527.1 of this Part.)

* * *

(c) Purchases by persons providing information and advertising services.

* * *

(2) All purchases of materials by an advertising agency for use in performing its services are purchases at retail subject to the sales tax.

(3) The purchase of a service subject to tax under section 1105(c)(1) of the Tax Law by a vendor who will resell that service as such or as a part of a service also subject to tax under section 1105(c)(1) is not a purchase at retail and is exempt from the sales tax.

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In Cooperman, Levitt and Winikoff, P.C., Adv Op Comm T&F, March 21, 1990, TSB-A-90(14)S the Commissioner opined that a Company's business activities which consist of providing a post card advertisement for a client and including such advertisement in a package containing similar post card advertisements for other clients, for distribution to potential customers within New York State are considered to result in the performance of an advertising service and not the sale of tangible personal property. Therefore, the receipts from the charges to clients for such advertising service are excluded from New York State and local sales and use tax under the provisions of Section 1105(c)(1) of the Tax Law and Section 527.3(b)(5) of the Sales and Use Tax Regulations. Moreover, the Commissioner opined that whereas the Company was performing an advertising service and not making sales of tangible personal property or services whereby title and possession are transferred to the Company's clients, the Company's purchases of mailing lists, cards, mechanicals and artwork were not considered to be purchased for resale or purchases of physical component parts of tangible personal property for resale. Thus, the Company's purchases of such items were subject to New York State and local sales or use tax where delivery occurred within New York State.

In the instant case, Petitioner solicits clients to be included in mass door-to-door advertising hangings in selected market areas, delivers copies of flyers to a local printer to be typeset and printed, packs hanging bags with flyers and hangs advertising bags on doors. Pursuant to the rationale set forth in Cooperman, Levitt and Winikoff, P.C., supra, the soliciting of clients to be included in mass door-to-door advertising hangings, arranging for printing of flyers, packing and distributing hanging bags result in Petitioner performing an advertising service and not the sale of tangible personal property. Accordingly, pursuant Section 1105(c)(1) of the Tax Law and Section 527.3(b)(5) of the Sales and Use Tax Regulations the receipts from the charges to clients for such advertising service are excluded from sales and use taxes. This would also be the case if Petitioner was only providing the packaging and distribution of the client's own printed advertising.

It is further noted that since Petitioner is performing an advertising service and not making sales of tangible personal property or services whereby title and possession are transferred to Petitioner's clients, that Petitioner's purchases of hanging bags, typesetting and printing are not considered to be purchased for resale or purchases of physical component parts of tangible personal property for resale. Therefore, pursuant to Cooperman, Levitt and Winikoff, P.C., supra, and Section 527.3(c) of the Sales and Use Tax Regulations purchases of such items by Petitioner will be subject to sales and use taxes.

DATED: April 25, 1994

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

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