

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

TSB-A-96 (50)S
Sales Tax
August 19, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S950728A

On July 28, 1995, a Petition for Advisory Opinion was received from United Parcel Service, Inc., 55 Glenlake Parkway, N.E., Atlanta, GA 30328.

The issue raised by Petitioner, United Parcel Service, Inc. is whether key-entry services performed by an outside temporary service agency are subject to New York State sales and use tax.

Petitioner makes the following submission of facts.

Petitioner contracts with an outside temporary service company, who provides Petitioner with temporary service personnel (hereinafter referred to as "temps"). These temps key-enter various manual records into Petitioner's computer system. The manual records include driver and administrative time cards, collect on delivery (C.O.D.) information used to unite funds collected from consignees with appropriate shippers, and package pick-up records used for billing Petitioner's shippers.

The employee time cards represent the time worked by each of Petitioner's employees for the week. The temps key-enter the information recorded on the time cards into Petitioner's computerized payroll system. Once entered, a payroll supervisor of Petitioner will perform additional steps on the computer system for the purpose of generating payroll checks.

The C.O.D.s represent cash and checks collected from the recipient by Petitioner's drivers. This is an additional service Petitioner provides for its shippers. At the various New York State accounting locations of Petitioner, the temps key-enter the information reflected on the C.O.D. turn-in stubs into Petitioner's computer system. Once entered, a C.O.D. supervisor will perform additional steps on the computer system for the purpose of generating C.O.D. remittance information. This information is then utilized by Petitioner's centralized C.O.D. facility located in Paramus, New Jersey for the purpose of remitting the funds back to the appropriate shippers.

Petitioner's package pick-up records represent the billing detail collected by its drivers from the shippers. The temps key-enter the information recorded on Petitioner's pick-up record into its computerized billing system. Once entered, a billing supervisor will perform additional steps on the computer system for the purpose of generating customer bills.

All services provided by the temps are performed at Petitioner's locations and on its computers. It should be noted that, upon completion of the contracted service, no tangible property is exchanged, created or altered. To achieve the desired result (i.e., payroll check, C.O.D. remittance information and customer's bill), additional processing steps must be conducted by Petitioner's personnel.

Section 1105 of the Tax Law provides, in pertinent part, as follows:

Imposition of sales tax.-- ...there is hereby imposed and there shall be paid a tax ...upon:

* * *

(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,

(2) Producing, fabricating, processing, printing or imprinting tangible personal property, performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale, upon which such services are performed.

Technical Services Bureau Memorandum TSB-M-87(13)S, Taxability of Services Provided by Temporary Service Contractors, states, in part:

Temporary service contractors can be distinguished from employment agencies in that the temporary service contractor, unlike the employment agency, is the employer of its own staff and is directly responsible for the salaries, withholding of taxes, and the hiring and firing of the individuals who are rendering services to its clients. In addition, the temporary service contractor controls to which of its clients the individual will be assigned

Section 1105(c) of the Tax Law imposes a tax on certain services. ... When a temporary service contractor provides personnel to perform such taxable services for its client, the fee paid by the client for these services constitutes a receipt subject to tax. Accordingly, the temporary service contractor is required to collect sales tax on the fee charged to the client for such taxable services, regardless of how the charge is arrived at or how much the contractor is required to pay its personnel If the services performed by the temporary service contractor's employee are not subject to tax under Section 1105(c) of the Tax Law, then no tax is to be collected on the charge for these services

Since the temps in this case are provided to Petitioner by a temporary service contractor, charges for the services performed by the temps will be taxable if the services are among the taxable services enumerated in Section 1105(c) of the Tax Law.

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Based on the facts presented, charges for the temporary employees (temps) working at Petitioner's work location and using Petitioner's equipment are not subject to sales tax. The temporary service company is not selling tangible personal property taxable under Section 1105(a) of the Tax Law, nor are the temps providing any of the taxable services enumerated under Section 1105(c) of the Tax Law. Since the temps do not furnish new information to Petitioner, they do not provide an information service taxable under Section 1105(c)(1) of the Tax Law. Since the temps do not effect a change in any tangible personal property furnished by Petitioner, they do not provide a processing, printing or imprinting service taxable under Section 1105(c)(2) of the Tax Law.

DATED: August 19, 1996

/s/
JOHN W. BARTLETT
Deputy Director
Technical Services Bureau

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