

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

TSB-A-96 (77) S
Sales Tax
December 13, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S960209B

On February 9, 1996, the Department of Taxation and Finance received a Petition for Advisory Opinion from MGI Output Technologies, Inc., 101 Prestige Park Road, East Hartford, CT 06108-1919.

The issues raised by Petitioner, MGI Output Technologies, Inc., are:

1. Whether the service of printing monthly statements on paper, inserting the statements into envelopes and mailing the statements is subject to New York State and local sales and use taxes.
2. Whether the service of printing confirmation notices on paper, inserting the confirmations into envelopes and mailing the confirmations is subject to New York State and local sales and use taxes.
3. Whether the service of printing invoices on paper, inserting the invoices into envelopes and mailing the invoices is subject to New York State and local sales and use taxes.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner is retained by various financial institutions to create monthly statements to be sent to each financial institution's customers. Each monthly statement contains the name, address and account number of the institution's customer and sets forth purchase, sale, redemption, dividend and interest transactions and cash deposits and withdrawals which occurred in the account during the preceding month. Petitioner prints the monthly statements on paper, inserts the statements into envelopes which are later sealed, and then mails, or arranges for a third party to mail, the statements to each institution's customers both inside and outside New York. In some cases, a copy is also mailed to the institution's customer's representative (i.e., broker), who may be inside or outside New York.

In order to prepare the monthly statements, Petitioner receives information each month from each financial institution which consists of the names, addresses and account numbers of the institution's customers and all transactions which occurred in the customers' accounts. The information is furnished to Petitioner either through an on-line transmission from the institution's computers to Petitioner's computers or by tangible magnetic media. Petitioner does not make any computation of the financial data it receives from the financial institutions. The information is received in a compressed form and consists of either raw data or data in a print image form. Petitioner's computers store this information for purposes of printing and, eventually, instructing

Petitioner's laser printers to print out the information in English in an easily readable tabular format. The information in Petitioner's computers is not returned to the financial institution, but is archived for an agreed time frame, then deleted.

In addition, Petitioner is retained by various financial institutions to create confirmations to be sent to each financial institution's customers. Each confirmation contains the name, address and account number of the institution's customer and sets forth the name of the security purchased or sold by the customer, the quantity of the security and the aggregate purchase or sales price. Petitioner prints the confirmations on paper, inserts the confirmations into envelopes which are later sealed, and then mails, or arranges for a third party to mail, the confirmations to each institution's customers both inside and outside New York. In most cases, Petitioner also mails a copy of the confirmation to the broker of the institution's customer who placed the trade. The broker may be inside or outside New York.

In order to prepare the confirmations, Petitioner either (1) receives information from the financial institution which consists of the names, addresses, and account numbers of the financial institution's customers and the details of the particular securities transaction being confirmed, or (2) receives the information from a data processing company. In the latter case, the financial institution has hired the data processing company to perform certain bookkeeping with respect to its customers' accounts, but has hired Petitioner to prepare and mail the confirmations. The information furnished by the data processing company relates only to the transactions of the financial institution's customers and is not made available to other clients of the data processing company. The information is received in a compressed form and consists of either raw data or data in a print image form. Petitioner's computers store this information for purposes of printing and, eventually, instructing Petitioner's laser printers to print out the confirmation in English in an approved format. The information in Petitioner's computers is not returned either to the financial institution or to the data processing company, but is archived for an agreed time frame, then deleted.

The information is furnished to Petitioner through an on-line transmission from either the financial institution's or the data processing company's computers to Petitioner's computers. In a few cases, a financial institution furnishes the information to Petitioner by tangible magnetic media.

Petitioner is also retained by various businesses to create invoices to be sent to each business' customers. Each invoice contains the name and address of the customer of the business, a brief description of the product sold or service rendered, an amount reflecting the price charged for the good or service, and the applicable sales tax due. Petitioner prints the invoices on paper, inserts the invoices into envelopes which are later sealed, and then mails, or arranges for a third party to mail, the invoices to each business' customers both inside and outside New York. No invoice is printed for the business to keep.

In order to prepare the invoices, Petitioner receives information from the business which consists of the names, addresses, account numbers, products or services sold, purchase price, and applicable sales tax. The information is furnished to Petitioner either through an on-line

transmission from the business' computers to Petitioner's computers or by tangible magnetic media. The information is received in a compressed form and consists of either raw data or data in a print image form. Petitioner's computers store this information, decompress the information, rearrange the information for purposes of printing, and eventually instruct Petitioner's laser printers to print out the information in English in a form recognizable as an invoice. The information in Petitioner's computers is not returned to the business, but is archived for an agreed time frame, then deleted.

In some cases, Petitioner does not mail or arrange for the mailing of the statements, confirmations or invoices, but delivers the printed material to the client for mailing.

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:

* * *

(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.

Section 1115(d) of the Tax Law provides:

Services otherwise taxable under paragraph (1), (2), (3), (7) or (8) of subdivision (c) of section eleven hundred five shall be exempt from tax under this article if the tangible property upon which the services were performed is delivered to the purchaser outside this state for use outside this state.

Section 525.2(a)(3) of the Sales and Use Tax Regulations provides that "[t]he sales tax is a 'destination tax', that is, the point of delivery or the point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate."

Section 527.4(e) of the Sales and Use Tax Regulations provides, in part:

Printing and imprinting. (1) The services of printing and imprinting tangible personal property furnished by or on behalf of a customer of the printer are taxable under section 1105(c)(2) of the Tax Law; the service of printing or imprinting tangible personal property which is sold by the person performing the service in conjunction with the sale is taxable as part of the sale under section 1105(a) of the Tax Law.

Example 1: A printer prints a form letter on letterhead stationery furnished by his customer. The printer's services are taxable.

Example 2: A firm addresses envelopes furnished by its customer. The addressing services are a taxable printing service.

Example 3: A printer prints business calling cards for his customer, supplying both the card and the service of printing. This is the sale of tangible personal property, the total amount being taxable as such (See section 526.6 of this Title.)

Section 528.23 of the Sales and Use Tax Regulations provides, in part:

Services on tangible personal property which is delivered out of state. [Tax Law, § 1115(d)] (a) Exemption. The receipts from the sale of the following services shall be exempt from the sales and compensating use tax when performed on tangible personal property which is delivered to the purchaser outside of this State for use outside of this State:

- * * *
- (2) the producing, fabricating, processing, printing or imprinting of tangible personal property which is not for resale and which was furnished directly or indirectly to the person performing the service by the purchaser. .
- * * *

(b) Delivery. (1) Delivery outside of the State shall mean the tangible personal property upon which the services have been performed has been delivered by the person performing the services in his vehicle or by common or contract carrier.

(2) Delivery to a purchaser or his designee in the State for immediate transportation outside of the State is not exempt.

Publication 831 (2/96), Collection and Reporting Instructions for Printers and Mailers provides, in part, as follows:

A printer delivering printed matter to a mailer in New York State is required to collect the sales tax on the entire charge unless the printer is furnished with proof of the portion to be mailed to persons outside of New York State and the destinations of all the material to be mailed to persons in New York State. If such proof is furnished, the printer is required to collect tax only on the charge for that portion of the printed matter that will be mailed to persons in New York State.

A mailer or printer-mailer is required to collect the statewide and appropriate local sales taxes on the printing, addressing, and other taxable charges for printed matter mailed to persons in New York State, whether mailed from within or outside the

state. The mailer or printer-mailer must maintain records showing the destinations of all material sent to persons in New York State and the portion of the material mailed to persons outside New York State.

The statewide tax and local sales taxes, at the rate in effect where delivery is made, must be collected on the entire charge if printed matter is delivered to the customer in New York State, even if the customer will subsequently send some or all of the printed matter to persons outside New York State.

In this case, Petitioner is retained by various financial institutions and businesses to print monthly statements, confirmations and invoices. Each monthly statement, confirmation and invoice printed by Petitioner includes the name, address and account number along with information pertaining to transactions relevant to the document being printed. Petitioner does not perform calculations on the information furnished to it by the financial institutions and businesses. The financial institutions or data processing companies perform the necessary calculations. Petitioner stores and rearranges the information it receives for the purpose of printing. After printing the monthly statements, confirmations and invoices on paper, Petitioner inserts the monthly statements, confirmations and invoices into envelopes and mails or arranges for a third party to mail them to the institutions' customers both inside and outside New York. In some cases, a copy of the monthly statement or confirmation is mailed to the representative or broker of the institutions' customer who may be inside or outside of New York. Also, in some cases, Petitioner delivers the printed material to the client for mailing.

With respect to issues "1", "2" and "3", if Petitioner's client furnishes the paper, Petitioner's printing of the monthly statements, confirmations and invoices constitutes the service of printing or imprinting tangible personal property under Section 1105(c)(2) of the Tax Law and Section 527.4(e) of the Sales and Use Tax Regulations. Therefore, the receipts from the sale of these services are subject to sales and use taxes. Also, in accordance with Section 1105(c)(2) of the Tax Law and Section 527.4(e) of the Sales and Use Tax Regulations, if the customer furnishes the outside envelopes, the printing or application of address labels is either a printing or processing service subject to such sales and use taxes. Receipts from the services of printing, imprinting and processing tangible personal property otherwise taxable under Section 1105(c)(2) of the Tax Law are not subject to sales and use taxes if the tangible personal property on which the services are performed are delivered outside of New York State for use outside the state. (See Section 1115(d) of the Tax Law, Section 528.23 of the Sales and Use Tax Regulations and Publication 831.)

Alternatively, if Petitioner provides the paper and envelopes for printing and addressing, then Petitioner's sales of the printed statements, confirmations and invoices and envelopes are sales of tangible personal property subject to tax under Section 1105(a) of the Tax Law.

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Where Petitioner is both the printer and mailer of the printed matter, Petitioner is required to collect tax only on the charge for that portion of the statements, confirmations and invoices mailed to persons in New York State. Where Petitioner delivers statements, confirmations or invoices to a mailer in New York State, Petitioner is required to collect the sales tax on the entire charge unless Petitioner is furnished with proof of the portion to be mailed to persons outside of New York State and the destinations of all the material to be mailed to persons in New York State. If such proof is furnished, Petitioner is required to collect tax only on the charge for that portion of the printed matter that will be mailed to persons in New York State. If the statements, confirmations or invoices are delivered by Petitioner to its client in New York State, the statewide tax and local sales taxes, at the rate in effect where delivery is made, must be collected on the entire charge, even if the client will subsequently send some or all of the printed matter to persons outside New York State.

It is noted that, where Petitioner provides the paper and envelopes for printing and mailing the statements, confirmations or invoices, Petitioner's purchase of this paper and envelopes may be made exempt from sales tax as purchases for resale. In addition, if the machinery, equipment, tools and supplies purchased by Petitioner are used or consumed by Petitioner directly and predominantly (that is, over 50 percent of their use is directly in the production phase) to produce tangible personal property (i.e., the printed matter) for sale, this machinery, equipment, tools and supplies would qualify for exemption from State and local sales and compensating use taxes pursuant to Sections 1105-B and 1115(a)(12) of the Tax Law. Effective September 1, 1996, tools and supplies are also exempt from the four percent local tax imposed within New York City under Section 1107 of the Tax Law.

DATED: December 13, 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.