

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

TSB-A-97(44)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S961204B

On December 4, 1996, the Department of Taxation and Finance received a Petition for Advisory Opinion from Salomon & Leitgeb CPA's, LLP, 534 Old Country Road, Plainview, NY 11803. Petitioner, Salomon & Leitgeb CPA's, LLP, submitted additional information pertaining to the Petition on February 1, 1997.

The issues raised by Petitioner are:

(1) Whether charges by Petitioner's client for the service of coordinating satellite media tours, speaking tours and media appearances are subject to sales and compensating use tax.

(2) Whether certain items purchased by Petitioner's client, including studio rentals, satellite time, uplink and downlink times, the services of makeup people and cameramen and reimbursed expenses, are subject to sales and compensating use tax.

(3) Whether Petitioner's client's maintenance of web sites to keep customers and the general public informed on press releases, news articles and updates of product information is subject to sales and compensating use tax.

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

Petitioner's client is a public relations firm. Petitioner's client coordinates media presentations and live appearances for its customers who are electronic manufacturers, cable channels, national associations and other organizations. The customers are located in New York State and throughout the United States and the world. Petitioner's client coordinates telephone, satellite and studio setups for satellite media tours, speaking tours and media appearances. In the case of a satellite media tour, a spokesperson, typically a celebrity, is at a certain location (in New York or elsewhere) to be interviewed by a reporter from another location. The interview is then broadcast by satellite nationwide and/or worldwide. These broadcasts can be live or taped. Petitioner's client sets up multiple locations throughout the United States for these broadcasts to be sent. In the case of speaking and media tours, people are scheduled to make TV, radio and newspaper appearances at selected locations both in New York and nationwide. The services which Petitioner's client provides its customers include production supervision, scripting, consulting, project management and web site maintenance.

Petitioner's client purchases studio rentals, satellite time, uplink and downlink times and the services of makeup people and cameramen.

Applicable Law and Regulations

Section 1105(b) of the Tax Law imposes a sales tax upon the receipts "from every sale, other than sales for resale, of . . . telephony and telegraphy and telephone and telegraph service of whatever nature except interstate and international telephony and telegraphy and telephone and telegraph service."

Section 1105(c) of the Tax Law imposes tax upon the receipts from every sale, except for resale, of certain enumerated services.

Section 527.2(d) of the Sales and Use Tax Regulations provides, in part:

Telephony and telegraphy; telephone and telegraph service. (1)
The provisions of section 1105(b) of the Tax Law with respect to telephony and telegraphy and telephone and telegraph service impose a tax on receipts from intrastate communication by means of devices employing the principles of telephony and telegraphy.

(2) The term *telephony and telegraphy* includes use or operation of any apparatus for transmission of sound, sound reproduction or coded or other signals.

* * *

(5) The tax on utility services applies to every charge for any telephone and telegraph service. Among these charges are . . . charges for special services, such as installation, change of location, conference connections, tie-lines, WATS lines and the furnishing of equipment.

Opinion

For satellite media tours, Petitioner's client coordinates all of the set-ups (telephone, satellite, studio) required for broadcasting media appearances by various speakers and celebrities. Presuming that this service merely consists of selecting and scheduling the use of equipment and facilities and does not entail the actual operation of the equipment, Petitioner's client is not considered to be performing any of the services enumerated under section 1105(c) of the Tax Law, nor is it considered to be performing a Section 1105(b) telephone or telegraph service. (see Pitney Bowes Management Services, Inc., Adv Op Comm T&F, January 25, 1993, TSB-A-93(10)S). Accordingly, the receipts from charges to the client's customers for this service are not subject to state or local sales tax (see Pitney Bowes Management Services, Inc., supra).

The additional services Petitioner's client provides its customers include coordinating and scheduling speaking tours and media appearances, consulting, project management, scripting and production supervision. None of these services constitutes a service described in Section 1105(c) of the Tax Law. Accordingly, Petitioner's client's receipts from the sale of these services are not subject

to sales and use taxes provided that they are not performed for customers in conjunction with the sale of tangible personal property. If a nontaxable service is performed in conjunction with the sale of taxable tangible personal property, the entire receipts from the sale are subject to tax unless the charges for the service and tangible personal property are separately stated and reasonable, and the service and property may be separately purchased (see Gormley & Partners, Adv Op Comm T&F, September 18, 1996, TSB-A-96(55)S).

With respect to issue "2", the renting of a studio typically includes the use of recording equipment along with the services of a recording operator. When Petitioner's client has the right either to direct the activities of the operator, or to supply an operator of its own, possession of the equipment is deemed to have been transferred to Petitioner's client. This makes the rental charge for the equipment subject to tax pursuant to Sections 1105(a) and 1101(b)(5) of the Tax Law and Section 526.7(a)(2) of the Sales and Use Tax Regulations. However, the portions of the rental charge allocable to the operator's services and rent for the room space itself are not taxable, provided the charges are reasonable and separately stated on the invoice or bill and the operator's wages reflect prevailing wage rates. See Sections 526.7(e)(6) and 526.8(c)(1) of the Sales and Use Tax Regulations. If taxable and nontaxable amounts are not separately stated, the entire amount is taxable.

Likewise, the purchase of the service of a cameraman to film an event is not in and of itself a taxable transaction. If, however, Petitioner's client has the right to direct and control the use of the cameraman's equipment, the transaction is considered to be the rental of tangible personal property. Camera equipment rentals are taxable to Petitioner's client unless qualifying for exemption under Section 1115(a)(12) of the Tax Law as rentals of equipment used directly and predominantly in the production of tangible personal property for sale. As noted above, the cameraman's wages, when separately stated from the charges for the equipment, are not taxable, provided they reflect prevailing wage rates. Payments to a cameraman who produces tangible personal property, such as a videotape, are considered receipts from the sale of tangible personal property and the entire receipt is subject to sales tax pursuant to Section 1105(a) of the Tax Law, unless the property is purchased for resale (see Video Memories Associates, Ltd., and Michael Marano, as Officer, Det Tax App Trib, March 14, 1996, TSB-D-96(16)S).

Purchases by Petitioner's client of satellite time and uplink and downlink times are considered to be the purchases of telephony or telegraphy within the meaning of Section 1105(b) of the Tax Law. The receipts from such services are subject to tax except where the services are performed on an interstate or international basis (see Satellite Signals Unlimited, Inc., Adv Op Comm T&F, October 15, 1984, TSB-A-84(26)S). It should be noted, however, that the rental by Petitioner's client of any initiating or receiving communication equipment which is delivered in New York State is taxable regardless of whether the transmission made by this equipment is intrastate, interstate or international.

With regard to makeup people, the City of New York imposes sales tax at the rate of four percent on the services of beauty, barbering, hair restoring, manicuring, pedicuring, electrolysis, massage and similar services pursuant to the authority of Section 1212-A(a)(2) of the Tax Law. Services of makeup people

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purchased by Petitioner's client constitute such services within the meaning and intent of Section 1212-A(a)(2) of the Tax Law and are therefore subject to tax in New York City at the rate of four percent (see Matter of N.B.E. Productions, LTD., Dec St Tx Comm, February 6, 1985, TSB-H-85(103)S). Such makeup services are not subject to tax outside New York City, and are not subject to the 1/4 percent tax imposed by Section 1109 of the Tax Law in the Metropolitan Commuter Transportation District.

All reimbursed expenses, including telephone and telegraph and other service charges, incurred by Petitioner's client and included in the charge to its customers are included in the definition of "receipt" in Section 1101(b)(3) of the Tax Law and Section 526.5(e) of the Sales and Use Tax Regulations. Therefore, the charge to a customer for such reimbursed expenses is subject to tax only when the receipts from Petitioner's client's sale is subject to tax. When Petitioner's client makes a nontaxable sale, the amount charged to its customers, including such reimbursed expenses, is not subject to tax.

With respect to issue "3", the web site maintenance service described by Petitioner is not an enumerated service under Section 1105(c) of the Tax Law and is therefore not subject to sales and use tax.

DATED: July 23, 1997

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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