

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

TSB-A-97(73)S  
Sales Tax

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S970626A

On June 26, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from Werthan Industries, Inc., d/b/a Check Printers, 1530 Antioch Pike, Antioch, TN 37013.

The issues raised by Petitioner, Werthan Industries, Inc., d/b/a Check Printers, are:

1. Whether the following provided by Petitioner are subject to New York State and local sales and use taxes:
  - a. Sorting of large print jobs of coupon payment books, monthly statements, co-issue letters and tax and interest statements ("Printed Material") by computer and zip code for mailing purposes.
  - b. Printing of Printed Material.
  - c. Inserting the Printed Material in envelopes and sealing the envelopes.
  - d. Affixing postage or metering mail.
  - e. Sorting items for mailing.
  - f. Bagging and mailing Printed Material.
  - g. Postal charges reimbursed by a financial institution.
2. Whether Petitioner must collect sales tax on Printed Material which is mailed to a financial institution's customers located outside of New York State, assuming such charges are separately billed to each financial institution.
3. Whether Petitioner must collect sales tax, if any, on its entire charge or only on the taxable services separately stated on its invoice.

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

Petitioner is a Delaware Corporation which has its principal office in Nashville, Tennessee.

Petitioner is retained by banks, mortgage companies, automotive finance companies and student loan servicing agencies ("Financial Institutions") to print Printed Material to be sent to each of the Financial Institution's customers. Petitioner prints the Printed Material on paper, inserts the Printed Material

into envelopes which are later sealed, and then mails the Printed Material to each of the Financial Institutions' customers. These customers reside both within and without New York State.

In order to prepare the Printed Material, Petitioner receives information from each Financial Institution which consists of the names, addresses and account numbers of the respective Financial Institution's customers, loan amounts, interest data and tax information (the "Customer Data"). The information is furnished to Petitioner either through an on-line transmission from the Financial Institution's 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 for the purpose of printing the Printed Material. The information in Petitioner's computers is not returned to the Financial Institution, but is archived for an agreed upon time frame, and then deleted.

Petitioner provides invoices which separately state the postal charges to be reimbursed by the Financial Institution. In addition, Petitioner provides separate bills to the Financial Institutions so as to separately state the charges for all services related to mailings made outside of New York State and mailings within New York State.

Petitioner intends to show its sales tax exempt services on its invoices under the heading "Exempt Services," and also to show the total charge for such exempt services.

Applicable Law and Regulations

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 1110(a) of the Tax Law provides, in part:

Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state ... (D) of any tangible personal property, however acquired, where

not acquired for purposes of resale, upon which any of the services described in paragraphs (2), (3) and (7) of subdivision (c) of section eleven hundred five have been 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 (3/97), 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.

Publication 842 (12/93) New York State and Local Sales Tax Information for Printers provides at pages 19 through 21 a detailed listing of tangible personal property and services and the taxability of such property and services commonly sold by printers. Among the property and services listed, computer services of printing letters, labels, etc., printing of envelopes, printing of address labels, and printing of stationery are subject to sales and use taxes unless sold for resale, sold to an exempt organization, delivered outside New York State or

are exempt promotional material for use outside New York State. Moreover, as

provided at pages 23, 24 and 25, ingredients or components which become part of the product to be sold, computers used directly and predominantly for typesetting and/or other production operations, paper stock and printing ink which are components of the printed matter to be sold may be purchased without the payment of sales tax.

Opinion

Morton L. Coren, P.C., Adv Op Comm T & F, March 6, 1997, TSB-A-97(12)S, held that the charges for the services of sorting printed material to prepare for mailing, folding letters and inserting them in envelopes, sealing the envelopes, affixing postage or metering mail, bagging and mailing the letter, and the cost of postal charges were not subject to sales tax if segregated from the taxable receipts on the customer's bill. However, the receipts from the printing of letters and address labels and affixing such labels to the printed material or envelopes were subject to sales tax if mailed to New York addresses. Charges for printing letters were not taxable if the printed material was being mailed to addresses outside of New York State and if these charges were separately stated on the invoice.

MGI Output Technologies, Inc., Adv Op Comm T & F, December 31, 1996, TSB-A-96(77)S, held that printing monthly statements, confirmation notices and invoices for various financial institutions constituted the service of printing and imprinting tangible personal property under Section 1105(c)(2) of the Tax Law or, alternatively, the sale of tangible personal property under Section 1105(a) of the Tax Law, and thus, the receipts from printing were subject to sales and use taxes. However, the receipts from the services of printing, imprinting and processing tangible personal property or from the sale of printed matter as tangible personal property, otherwise taxable under Section 1105(a) or Section 1105(c)(2) of the Tax Law, are not subject to sales and use taxes if the printed material is delivered outside of New York State for use outside the State.

Accordingly, with respect to issue "1", pursuant to Morton L. Coren, P.C., supra, and Publication 842, Petitioner's services listed as items a, c, d, e, f, and g are not subject to State or local sales and use taxes. However, item b is subject to State and local sales and use tax, if the Printed Material is mailed to New York addresses. See MGI Output Technologies, Inc., supra. It is noted that if Petitioner's customers furnish the paper, Petitioner's printing of the Printed Material 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.

Alternatively, if Petitioner provides the paper and envelopes for printing and addressing, then Petitioner's sales of the Printed Material and envelopes are sales of tangible personal property subject to tax under Section 1105(a) or Section 1110 of the Tax Law.

With respect to issue "2", pursuant to Section 525.2(a)(3) of the Sales and Use Tax Regulations and Publication 831, Printed Material mailed by Petitioner to the Financial Institution's customers is considered to be used at the point to which it is mailed. Therefore, no tax is due on Printed Material that is mailed out of the State by the Petitioner to the Financial Institution's customers. If Petitioner performs a printing or imprinting service for a Financial Institution rather than make a sale of tangible personal property, this service will be exempt from tax under Section 1115(d) of the Tax Law if the Printed Material is mailed out of the State to the Financial Institution's customer. However, outside mailing envelopes and address labels used to mail printed matter from a point in New York State through a post office located in New York are fully taxable at the location from which they are mailed as their use occurs in New York State, even though all or a portion of the contents may be subject to tax based on mailing destination. (See Morton L. Coren, P.C., supra.)

Concerning issue "3", pursuant to Morton L. Coren, P.C., supra, and George Silver, Adv Op St Tx Comm, April 24, 1986, TSB-A-86(15)S, if the charges for taxable and nontaxable property and/or services are separately stated on the invoice, then sales tax need only be collected on the taxable receipts. In addition, exempt services may be combined in a single amount under the designation of "non-taxable mailing" or "exempt services" where the invoice includes an itemized list of the exempt services provided.

DATED: December 4, 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.