

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

TSB-A-98(28)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S971210D

On December 10, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from the Automobile Club of New York, Inc., 1415 Kellum Place, Garden City, New York 11530.

The issues raised by Petitioner, Automobile Club of New York, Inc., are as follows:

1. Whether the cost of equipment and supplies used for producing an AAA Triptik, including ink, paper, equipment and machinery, or a portion of the cost thereof, is exempt from sales and use tax under Section 1115(n) of the Tax Law.
2. Whether the purchase of any of the following materials is exempt from sales and use tax as promotional materials:
 - a. AAA "Your Membership Benefits Kit"
 - b. AAA maps
 - c. AAA Tourbooks
 - d. Maps for AAA members
 - e. Membership applications
 - f. Envelopes used to mail these items

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

Petitioner is an affiliate of a national not-for-profit organization known as the American Automobile Association (AAA). Petitioner is an automobile club membership organization which receives dues from its members and provides a number of services and savings opportunities to them. A fee is paid by Petitioner to the national organization on a per member basis. An AAA card is issued to each member entitling the member to service at any AAA office in the U.S. and Canada as well as other services and benefits. The services and benefits are mostly related to automobile and other travel.

The following detailed explanations relate to the issues for which the Advisory Opinion is requested.

1. A Triptik is a personalized routing booklet with the AAA logo which contains detailed maps outlining a preplanned driving route and other relevant travel and member information. The Triptik also contains some advertising for other AAA services and may have advertising from unrelated merchants. It is provided to members free of charge.

The Triptik is normally delivered to members via common carrier or the U.S. Postal Service. It is also available to be picked up at an AAA location if necessary, but is generally delivered to the member. An accurate count can be made of those Triptiks mailed versus those picked up at an AAA location.

The front and back cover of the Triptik is preprinted and purchased from an outside vendor. The internal contents are printed in-house, cut, folded to size, and bound to form the Triptik. The internal contents are printed from computer programs which contain all of the maps and other information included in the Triptik which a member requests. The Triptik is 'personalized' for the member in that only the maps for the specific route and destination are included. The programs or software which contain all of the map information and other information are acquired from an outside vendor.

The paper and ink used to print the maps, plastic binders, and logo imprinted envelopes are purchased from outside vendors. The printers, computers and software are leased from outside vendors. The binding machine used to put the Triptik together was purchased.

2. The AAA "Your Membership Benefits Kit" ('Membership Kit'), is a small brochure packet with inside pockets to hold other information for members of the club. It too has the AAA logo on the cover. Included in the packet is a Membership Benefits Handbook, and an envelope with the AAA logo on it which contains Members-Only coupons and benefit information. The Membership Kit is provided free of charge to all club members.

The Membership Benefits Handbook is a comprehensive guide to services and savings for club members. The "Members-Only Coupons and Benefit Information" packet contains coupons and information for services and special offers from AAA services and other outside merchants. These include emergency road service reference guides, auto trip delay contracts, auto repairs, hotel discounts, traveler's checks and car rental information and discounts. It also contains an AAA emblem which can be affixed to an automobile.

The Membership Kit and the related inserts are purchased from outside vendors. Some of these items are co-op type advertising where the merchant will split the costs, or Petitioner may receive a commission from the merchant when the services promoted are used by a member. The Membership Kits are delivered to members via common carrier or the U.S. Postal Service, in an envelope which has the AAA logo.

3. The AAA Maps are standard folded road maps of specific geographic regions which have the AAA logo on the cover. These maps are available free of charge to members and are sent to members via common carrier or the U.S. Postal Service, in a logo envelope. They are often sent with the Triptik, but they may be ordered by a member and sent separately. They may be available to be picked up at an AAA location, but are normally sent to the member. An accurate count can be made of those AAA maps mailed versus those picked up at an AAA location.

The maps are purchased from the affiliated national organization. The maps may be ordered in conjunction with a specific trip, and may accompany a Triptik. The map in this case may be imprinted with arrows which indicate an overall automobile route. These arrows are drawn by hand on the maps in-house and are done on approximately 90% of the maps sent to members.

On occasion, the maps sent to a member are purchased from outside vendors and do not have the AAA logo on the map, but are mailed in a logo envelope and are provided free of charge to members.

4. The AAA Tourbook is an illustrated book with the AAA logo which covers a specific geographic region of the U.S., Canada or Mexico. The book highlights points of interest along a member's travel route, as well as AAA approved accommodations and restaurants in the particular geographic region.

The Tourbook is provided free of charge to members. It is normally sent to members via common carrier or the U.S. Postal Service, in a logo envelope. It may be picked up at a AAA location, but is normally sent to a member along with a Triptik and AAA map. The Tourbook can also be ordered separately. An accurate count can be made of those Tourbooks mailed versus those picked up at an AAA location.

The Tourbook is purchased from the affiliated national organization. It also contains advertising for other AAA services and other merchants such as hotels and restaurants.

5. The Maps for AAA members is a map book with the AAA logo on the cover, as opposed to a traditional folding map. It is a map of New York City and vicinity and is sent to members free of charge as a gift, and may accompany a Membership Kit.

These maps are purchased from outside vendors and are mailed to members via common carrier or the U.S. Postal Service. They contain detailed road maps, related information, information about other AAA services and some advertising for merchants such as car rentals and traveler's checks.

6. The Membership Application is an application to become a member of the club. It consists of a letter which highlights the AAA services and savings opportunities and offers a AAA Visa or MasterCard. The actual membership application is a detachable portion of the letter indicating the cost of membership and preferred method of payment. The Membership application is sent to prospective members free of charge in a logo envelope via common carrier or the U.S. Postal Service.

Members may pay their dues by either check or credit card. There is also an option to have each year's renewal charged automatically to the credit card. In all other situations, annual renewal notices are sent under separate cover to members.

Petitioner provided samples of all the above described items.

Applicable Law

Section 1101(b)(12) of the Tax Law defines promotional materials as:

Any advertising literature, other related tangible personal property (whether or not personalized by the recipient's name or other information uniquely related to such person) and envelopes used exclusively to deliver the same. Such other related tangible personal property includes, but is not limited to, free gifts, complimentary maps or other items given to travel club members, applications, order forms, and return envelopes with respect to such advertising literature, annual reports, promotional displays and Cheshire labels but does not include invoices, statements and the like.

Section 1105(a) of the Tax Law imposes sales tax on the receipts of every retail sale of tangible personal property, except as otherwise provided.

Section 1115(a) of the Tax law, provides, in part:

Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(12) Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale

Section 1115(n) of the Tax Law provides, in part:

(1) Except as otherwise provided in this subdivision, promotional materials mailed, shipped, or otherwise distributed from a point within the state, by or on behalf of vendors or other persons to their customers or prospective customers located outside this state for use outside this state shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten of this article.

* * *

(3) Receipts from the retail sale of promotional materials, receipts from every sale, except for resale, of services described in paragraph one or two of subdivision (c) of section eleven hundred five to such promotional materials and consideration given or contracted to be given for either such materials or such services to such materials shall be exempt from tax under this article to the extent of the vendor's separately stated charge to the purchaser of such materials or services for the vendor's cost to ship or deliver

such materials to the purchaser's customers or prospective customers by means of the United States postal service, paid by the vendor to such postal service to ship or deliver such materials, but only where the vendor separately states such charge to ship or deliver (not exceeding the vendor's United States postal service costs) in a written contract with the purchaser or on a written bill rendered to the purchaser.

* * *

(4) Notwithstanding any contrary provisions of paragraph one of this subdivision, promotional materials which are printed materials and promotional materials upon which services described in paragraph two of subdivision (c) of section eleven hundred five have been directly performed shall be exempt from tax under this article where the purchaser of such materials mails or ships such promotional materials, or causes such promotional materials to be mailed or shipped to its customers or prospective customers, without charge to such customers or prospective customers, by means of a common carrier, United States postal service or like delivery service.

Opinion

Issue 1

Petitioner's AAA Triptik given free of charge to members constitutes a promotional material under Section 1101(b)(12) of the Tax Law. If Petitioner purchases the Triptik, or the preprinted front and back cover of the Triptik, from the national affiliate or an outside vendor, the purchase would be exempt from sales and use taxes to the extent that the Triptik is mailed without charge to recipients outside the state or within the state in accordance with Section 1115(n)(4) of the Tax Law.

Purchases of tangible personal property used by Petitioner to print its Triptik in-house, such as paper, ink, binding materials and mechanicals, are subject to tax under Section 1105(a) or Section 1110 of the Tax Law. However, if Petitioner delivers any of the Triptiks to customers outside the state for use outside the state, Petitioner will be entitled to a refund or credit of sales or use tax paid on the paper, ink and plastic binder used to make the Triptiks delivered outside the state, provided that these materials are used only for fabricating, processing, printing, or imprinting the property, in accordance with Section 1119(a)(4) of the Tax Law. (See Technical Services Bureau Memorandum, Expanded Sales and Compensating Use Tax Exemption for Promotional Materials, August 20, 1997, TSB-M-97(6)S).

The printers, computers, software and binding machine purchased by Petitioner are tangible personal property purchased at retail, and are subject to sales and compensating use taxes. This equipment is not eligible for the exemption from sales tax for manufacturing equipment under Section 1115(a)(12) of the Tax Law, since they are not used to produce tangible personal property for sale.

The envelopes in which the Triptiks are mailed will qualify as promotional materials under Section 1101(b)(12) and may be eligible for exemption from sales and use tax, provided that such envelopes are used exclusively either to deliver Triptiks alone or to deliver Triptiks with any other promotional materials, as discussed below in "Issue 2".

Issue 2

The AAA "Your Membership Benefits Kits", AAA Maps, AAA Tourbooks, Maps for AAA Members and Membership Applications qualify as "promotional materials" as defined in Section 1101(b)(12) of the Tax Law. These are printed promotional materials under Section 1115(n)(4) of the Tax Law. Effective March 1, 1997, printed promotional materials and promotional materials upon which Section 1105(c)(2) services have been performed which are mailed or shipped to customers or prospective customers within New York State, as well as customers or prospective customers outside New York State, by U.S. Postal Service or common carrier, free of charge to the recipient, are exempt from sales and compensating use tax pursuant to Section 1115(n)(4). Envelopes used exclusively to deliver promotional materials are also promotional materials. If the envelope qualifies as a promotional material, it is exempt if it is mailed outside New York, or if it is mailed or shipped in New York, as described. However, to the extent that any of such promotional materials are picked up by the customer at an AAA office in New York State, Petitioner's purchases of these materials will be subject to tax, since they are not distributed, mailed or shipped in accordance with Section 1115(n)(1) or (4). Petitioner may make purchases of promotional materials tax exempt by giving the supplier a properly completed Form ST-121.2, Certificate of Exemption for Purchases of Promotional Materials, within 90 days of delivery of the promotional materials. See Section 1132(c)(1) of the Tax Law. Petitioner should indicate on the certificate the percentage of exempt sales. To the extent that Petitioner indicates an exempt percentage on the certificate higher or lower than is warranted, Petitioner would owe tax or be entitled to a credit or refund, as the case may be.

DATED: April 14, 1998

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

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