

Limitations On Printing Industry Audits

At a meeting on January 18, 1979, the State Tax Commission adopted a policy of limiting the assessment periods of printing industry audits involving the 4% New York City Sales and Use Tax as it applies to certain items used in production.

The Commission, in adopting this policy, addressed itself only to the periods beginning December 1, 1975 through November 30, 1978.

Audits for periods beyond November 30, 1978 were not at issue, and therefore current audit procedure is still applicable.

The limitation on assessment applies only to finished lithographic negatives, positives and plates; unexposed plates (metal or otherwise); and unexposed film, purchased by printers or lithographers, and used or consumed directly and predominantly in the production of printed and lithographed matter for sale. Where the auditor determines that the 4% New York City Sales and Use Tax is due on the above items, he shall limit the assessment of tax on those items to the periods beginning on or after December 1, 1975. Furthermore, this policy shall also apply to those trade platemakers, printers and lithographers who resold such items prior to their use in production, where they failed to collect the applicable 4% New York City Sales and Use Tax on the sale. For the periods December 1, 1975 through November 30, 1978, where reasonable cause is shown, penalties will be waived and minimum statutory interest imposed.

Signed consents extending the period of time in which an assessment of tax may be made to periods prior to December 1, 1975, shall apply to all other items on audit except those noted above.

For a discussion of the items involved, refer to the attached opinion of former Commissioner Gallman, dated December 15, 1969.

Please note the following changes which have taken effect since the issuance of the aforementioned opinion of Commissioner Gallman.

1. Sections 1115(a)(12) and 1210(a) of the Tax Law, referred to in the opinion, were amended effective September 1, 1974.
  - a. Section 1115(a)(12) now exempts "machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property,... for sale, by manufacturing...".
  - b. Section 1210(a) now exempts from the local Sales and Use Taxes (except New York City's) "...tangible personal property for use or consumption directly and predominantly in the production of tangible personal property,... for sale, by manufacturing,...".

2. Both New York State and New York City sales and use tax rates have been increased.
  - a. The 3% New York State Sales and Use Tax referred to in the opinion was increased to 4%, effective June 1, 1971.
  - b. The 3% New York City Sales and Use Tax referred to in the opinion was increased to 4%, effective July 1, 1974.

**STATE OF NEW YORK - DEPARTMENT OF TAXATION AND FINANCE**

Reproduced below is the Opinion of the Commissioner of Taxation and Finance, dated December 15, 1969, concerning the sales tax status of lithographic negatives, positives and plates.

Dear Mr. -----:

This is in reply to your request, on behalf of the -----  
----- Association, Inc., for a ruling that purchases of lithographic negatives, positives and plates by a printer or lithographer from a trade platemaker or a supplier are exempt from New York State and local sales and use taxes.

In producing printing or lithography, a printer or lithographer may purchase finished photographic positives, negatives, and plates (metal or otherwise) from trade platemakers. Also printers or lithographers purchase unexposed film and unexposed plates from suppliers which are used for the ultimate purpose of making finished plates with images ready for the press.

Finished plates, from which the images are transferred to paper, board, plastic and other materials are produced from photographic negatives and positives. The processes of printing and lithography involve the transfer of the image from the finished plate to the final product, either by direct impression as in letterpress printing or from the finished plate to a blanket and then to the final product as in lithography. The finished plate is produced by transferring an image to it from a photographic negative or positive. Unless it is anticipated that additional orders for the same copy will be required, the plates are sold for scrap and the negatives and positives destroyed shortly after the press run. If additional orders for the same copy are anticipated, the negatives, positives and plates are stored, usually by the printer or lithographer. In some cases the negatives, positives or plates are the property of the customer who furnishes them to the printer or lithographer for the press run. Such cases, however, are not the general custom, except as to certain products.

Section 1115(a)(12) of the Tax Law exempts from the 3% New York State sales and use taxes "Machinery or equipment for use or consumption directly and exclusively in the production of tangible personal property \* \* \* for sale, by manufacturing \* \* \* ."

Section 1210(a) of the Tax Law exempts from the local sales and use taxes (except New York City's) "tangible personal property \* \* \* for sale, by manufacturing \* \* \* ." It also provides that the exemption provided in Section 1115(a)(12) does not apply to New York City's tax.

I am of the opinion that finished lithographic negatives, positives and plates and unexposed plates (metal or otherwise) and unexposed film purchased by printers or lithographers are equipment used or consumed directly and exclusively in the production of printed and lithographed matter for sale, and that purchases of the foregoing items by printers or lithographers are within the exemption from the New York State Sales and Use Taxes accorded by Section 1115(a)(12) of the Tax Law, and are exempt pursuant to Section 1210(a) of the Tax Law from local sales and use taxes imposed outside of New York City.

In view of the above, printers and lithographers may purchase the above equipment without payment of the 3% statewide sales or use taxes and local sales or use taxes (except New York City's 3% tax) provided they give the trade platemaker or supplier an Exempt Use Certificate (Form ST-121). The purchase of this equipment is subject to the 3% New York City sales and use taxes since New York City's tax has no production exemption. However, under the limited circumstances set forth below, finished negatives, positives and plates may be purchased without payment of any sales or use tax, including New York City's 3% tax, on the ground the purchase is for resale, but the printer or lithographer must collect a tax on the sale of these items to the customer.

Where a printer or lithographer and his customer enter into a written agreement whereby the printer or lithographer is to purchase finished plates, negatives or positives, to be resold to his customer, prior to any use by the printer or lithographer, and title to the finished plates, negatives or positives is to vest in the customer on delivery at the place of business of the printer or lithographer, a resale of such plates, negatives or positives by the printer or lithographer to his customer will be recognized on delivery of such plates, negatives or positives to the printer or lithographer by the trade platemaker. The purchase by the customer of the plates, negatives or positives from the printer or lithographer is taxable to the customer at the state and local tax rates in effect at the place of delivery. Where a written agreement containing the provisions described above has been entered into, the printer or lithographer will be permitted to purchase the plates, negatives or positives without payment of sales or use taxes by furnishing a Resale Certificate (Form ST-120) to the trade platemaker and a resale to the customer, as a retail sale, occurs on delivery to the printer or lithographer by the trade platemaker. The customer must be billed by the printer or lithographer, separately, for such plates, negatives or positives, with the sales tax shown separately computed at the rates in effect at the place where delivery is made by the trade platemaker, i.e., at the place of business of the printer or lithographer.

Sincerely,

/S/ Norman F. Gallman

NORMAN F. GALLMAN  
Acting Commissioner