

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

TSB-A-82(11)S
Sales Tax
March 12, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S811110A

On November 10, 1981 a Petition for Advisory Opinion was received from Bachrach, Inc., 44 Hunt Street, Watertown, Massachusetts 02172.

The issue raised is whether Petitioner is responsible for the collection of sales tax on "rush service" charges to customers.

Petitioner is a corporation engaged in the business of photography. Petitioner has instituted a "rush service" for the delivery of proofs to its New York (and other) customers from its processing plant in Boston, Massachusetts. The proofs remain the property of Petitioner and are submitted to the customer solely for approval prior to the preparation of the finished photographs. The customer is invoiced for the "rush service."

Section 1105(a) of the Tax Law imposes the State sales tax on the ". . . receipts from every retail sale of tangible personal property" Section 1101(b)(3) of the Tax Law defines the term "receipt" as the ". . . amount of the sale price of any property and the charge for any service taxable under this article, valued in money, whether received in money or otherwise"

Section 526.5 of the Sales and Use Tax Regulations provides that: "All expenses incurred by a vendor in making a sale, regardless of their taxable status and regardless of whether they are billed to a customer are not deductible from the receipts."

Example 1: A photographer contracts with a customer to furnish photographs at \$50.00 each in addition to expenses. The customer is billed as follows:

Photographs (2)	\$100.00
Model fees	60.00
Meals	10.00
Travel	25.00
Props (Flowers)	<u>5.00</u>
Total Due	\$200.00

Receipt subject to tax is \$200.00 (20 NYCRR 526.5(e))

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The same provision describes the manner in which transportation charges may be excluded from tax, as follows: "(1) The cost of transportation of tangible personal property, sold at retail, which is separately stated in the written contract, if any, and on the bill rendered to the purchaser is excluded from the receipts subject to the tax.

(2) To qualify for the exclusion, transportation costs must be for the delivery of the tangible personal property to the purchaser. Any charge made to a retail purchaser, whether labeled transportation, handling or some other designation, which represents the cost of transportation between a supplier, manufacturer, warehouse, or catalog or other distribution point, and the vendor's place of business constitutes part of the receipt subject to tax." 20 NYCRR 526.5(g).

Petitioner's charge for "rush service" cannot be construed to be an excluded transportation charge, because the proofs transported do not ordinarily constitute the tangible personal property being sold to the customer. Accordingly, the charge is "an expense incurred by a vendor in making a sale," whether or not billed directly to the customer, as described in section 526.5 of the Sales and Use Tax Regulations, and as such is part of the taxable receipt from the sale of photographs. In the event that the presentation of the proofs to the customer does not result in the sale of finished photographs, there is no "receipt" for sales tax purposes, and consequently no tax would be due.

DATED: February 22, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau