

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

TSB-A-88(30)S
Sales Tax
May 26, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S871208A

On December 4, 1987, a Petition for Advisory Opinion was received from Stillman Advertising Inc., 90 Adams Ave., Hauppauge, New York 11788.

The issues raised are whether Petitioner, an advertising agency, must collect sales tax when billing clients for (1) billboard advertising and (2) placement of advertisements in trade journals not sold at newsstands.

Section 1105(c)(1) of the Tax Law imposes tax on certain information services, but excludes the "services of advertising or other agents, or other persons acting in a representative capacity ... "

Pursuant to the Sales and Use Tax Regulations of the Commissioner of Taxation and Finance, exempt advertising services consist of consultation and development of advertising campaigns and placement of advertisements with the media without the transfer of tangible personal property to the client; purchases of tangible personal property and taxable services by an advertising agency for use in performing its service are purchases at retail subject to the sales tax. 20 NYCRR 527.3(b)(5), (c)(2).

Issue 1.

When engaged by a client to provide billboard advertising, Petitioner enters in a contractual agreement with an outdoor display business (Display) who, for a monthly fee, locates and provides billboard space, executes the desired display by painting or posting paper panels and thereafter maintains the display during the contract term.

Display's charges, increased by a profit margin or agency fee, are billed by Petitioner to its client. Petitioner asks whether it must collect sales tax on these receipts.

In accordance with Section 1105(c)(3) of the Tax Law, quoted above, Petitioner's entire charge to a client for arranging a billboard display is exempt as the "services of advertising".

Moreover, Petitioner's payments to Display are not taxable because Display is itself providing exempt services. Matter of Ruth Outdoor Advertising Co., Decision of the State Tax Commission, April 3, 1981, TSB-H-81(102)S.

Issue 2.

The Tax Law (§1115[a][5]) exempts from tax the sale of newspapers and periodicals. The Sales and Use Tax Regulations (20 NYCRR 528.6[c][1]) define a periodical as a publication which, among other criteria, must be available for circulation to the public.

An advertising agency's total fee, whether or not itemized on the billing to the client, for producing an advertisement and placing it in a printed medium without the transfer of tangible personal property to the client - is an exempt advertising charge as defined in Regulation 527.3, supra. The operation of the exemption is not dependent on the selected publication's taxability or method of distribution, nor is it material whether or not the publication is for sale.

However, it should be noted that determination of the tax status of certain purchases and sales by an advertising agency requires it to ascertain whether a publication carrying its advertisements is intended for sale rather than for distribution at no charge or at a nominal amount not reflecting its true cost.

The Tax Law (§ 1115[a][12]) provides an exemption from sales and use taxes for purchases of machinery and equipment used directly and predominantly in the production of tangible personal property for sale by manufacturing. Artwork, layouts, mechanicals, printing plates and similar materials used to produce advertisements for placement in publications which are for sale are equipment qualifying for the manufacturing exemption. Accordingly, Petitioner's purchases of such equipment will not be subject to state and local (except New York City) sales tax if each supplier is given a properly completed Exempt Use Certificate (Form ST-121). Petitioner in turn must obtain an Exempt Use Certificate from the client purchasing its services.

Purchases of equipment for use or consumption in the production of advertisements to be placed in publications which are not for sale are taxable retail sales to the Petitioner pursuant to Regulation Section 526.6(c)(4) and 528.6(d). See Technical Services Bureau Memorandum, Printing Industry, May 15, 1980, TSB-M-79 (7.1) S.

Furthermore, if Petitioner produces and sells tangible personal property (mechanicals, paste-ups, etc.) to a client who will use this property to place advertisements in publications which are sold, Petitioner need not collect state and local (except New York City) taxes if the client furnishes an appropriate exemption document.

To be valid, an exemption certificate must be received by the vendor not later than 90 days after the delivery of the property or the rendition of the service. Tax Law §1132(c).

Finally, it must be pointed out that the tax treatment of both purchases and sales of an advertising agency may change if its client is an organization exempt from tax pursuant to Tax Law § 1116 or if a principal/agent relationship exists between agency and client. In such event review of

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the following Department of Taxation and Finance Publications may be helpful: Technical Services Bureau Memorandum Advertising Agencies, June 10, 1983, TSB-M-83(16)S; Greenstone & Rabasca Advertising Inc., State Tax Commission Advisory Opinion, September 9, 1986, TSB-A-86(35)S.

DATED: May 26, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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