

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

TSB-A-88 (45)S
Sales Tax
September 13, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S880426A

On April 26, 1988, a Petition for Advisory Opinion was received from I & D Inc. 1492 Kelton Drive, Stone Mountain, Georgia 30083.

The issue raised is whether the portion of Petitioner's fee to its customers for the services of supervising personnel is subject to the New York State sales and use tax and, if so, whether the portion of the supervisor's costs which relate to hiring laborers, arranging for shipment and return of exhibits, purchasing additional parts and equipment and arranging disassembly of exhibits is excluded from the amount subject to tax.

Petitioner previously requested and received an advisory opinion (TSB-A- 85(16)S) concerning substantially the same situation. There, as here, the description of Petitioner's services indicated that:

Petitioner's business consists of assembling and disassembling exhibits for persons and businesses that wish to advertise products and services at trade shows and conventions throughout the United States, including New York. The exhibits are generally constructed by exhibit shops or by the exhibitors themselves and may be used at several shows in different parts of the country. The exhibits which Petitioner assembles and disassembles are shipped to the point of use by interstate carriers in crates and disassembled parts. Once the shipment arrives at the show floor, Petitioner uncrates the exhibit, bolts it together and puts it in place. When the convention is over, Petitioner takes the exhibit apart and packs the parts into crates for shipment to the next destination. Petitioner does not alter or modify the parts of the exhibit, but simply provides labor for the assembly and subsequent disassembly of the exhibit. In the course of providing this service, Petitioner consumes miscellaneous items such as tape, nuts and bolts, the cost of which is billed to customers along with sales tax paid by Petitioner on these items. (TSB-A-85(16)S)

The previous Advisory Opinion held that Petitioner's services were subject to sales tax except that if he separately stated his charge for dismantling the displays, such dismantling charges would not be taxable.

Petitioner now states that it conducts its business by employing a number of supervisory personnel in various cities on a full-time basis. These supervisors are responsible for retaining contract laborers to assemble and disassemble the exhibits.

Petitioner states that its supervisory employees have a number of duties, including arranging delivery of the trade show exhibit, hiring the necessary skilled and unskilled laborers to assemble the exhibit, securing necessary equipment and parts, monitoring the status of the exhibit during the trade show, supervising the dismantling of the exhibit, and arranging the return shipment of the exhibit. Petitioner maintains that these duties do not involve "setting up" or "putting personal property in place for use." This function is the responsibility of the skilled and unskilled laborers retained by the supervisory personnel.

Petitioner is sometimes hired and paid directly by the exhibitor and in other instances is hired and paid by an exhibit shop which takes care of the arrangements for assembly and disassembly of an exhibit that it has built as a service to its customers.

Section 1105(c)(3) of the Tax Law imposes a tax on "Installing tangible personal property... not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith..." The sales tax regulations indicate that "installing means setting up tangible personal property or putting it in place for use." (20 NYCRR 527.5(a)(2)).

Section 1101(b)(3) of the Tax Law defines receipt as "[T]he amount of the sale price of any property and the charge for any service taxable...without any deductions for expenses...."

Section 526.5 (e) of the regulations explain the above section of law.

(e) Expenses. All expenses, including telephone and telegraph and other service charges, 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 each in addition to expenses.

The customer is billed as follows:

Photographs (2)	\$100
Model fees	60
Meals	10
Travel	25
Props (Flowers)	<u>5</u>
Total due	\$200

Receipt subject to tax is \$200

Example 2: An appliance repairman charges \$10 per hour plus expenses when on a service call. The customer is billed as follows:

3 hrs. at \$10	\$ 30
Travel	15
Parts	20
Meals	<u>5</u>
Total due	\$70

Receipt subject to tax is \$70

The essence of these examples is that the customer is purchasing photographs and a repair service both of which are subject to tax on the total price even though some of the expenses attributable to the sale are not subject to tax.

Petitioner provides the services of installation and dismantling of trade show exhibits. During the course of providing these services, Petitioner may incur expenses which may not be subject to tax if purchased directly by Petitioner's customers. Nevertheless, such expenses are components of a charge for taxable services whether or not separately stated by Petitioner on its bills to its customers. The taxable charge cannot be rendered exempt from tax in whole or in part merely by separately itemizing the components. Rochester Gas and Electric Corporation v. New York State Tax Commission, 70 N.Y.2d 613; Cecos International, Inc. v. The State Tax Commission of the State of New York, 70 N.Y.2d 606; Penfold v. New York State Tax Commission, 114 A.D.2d 696 (1985).

Accordingly, Petitioner is required to collect sales and use tax on its total charge without any reduction for expenses regardless of Petitioner's method of billing. As previously noted, separately stated charges for dismantling services are not subject to tax.

DATED: September 13, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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