

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

TSB-A-92 (23)S  
Sales Tax  
March 16, 1992

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S911112B

On November 12, 1991, a Petition for Advisory Opinion was received from Morton L. Coren, P.C., 638 Meadow Court, Westbury, New York 11590.

The issue raised by Petitioner, Morton L. Coren, P.C., is whether Petitioner's client may purchase certain services used in connection with the sale of clothing and other merchandise for resale; and if not, would the purchase of said services be subject to the compensating use tax if such services were performed outside of New York State.

Petitioner's client sells items of clothing and other merchandise. Petitioner's client requires that labels containing price and inventory information be attached to the items sold. The client purchases blank labels, ink and plastic devices. The plastic devices are used to attach the labels to the item for sale. The client owns the machinery used to print the labels. Petitioner's client has paid sales tax on all the above tangible personal property except the clothing and merchandise held for resale.

Petitioner's client contracts with a separate company that provides the following services:

- 1) receive and inspect merchandise,
- 2) receive and inspect merchandise and put the merchandise on hangers supplied by Petitioner's client,
- 3) affix labels supplied by Petitioner's client to merchandise, and
- 4) print labels and affix them to merchandise using equipment and supplies owned by Petitioner's client.

Section 1105(c) of the Tax Law provides, in part, that the receipts from every sale, except for resale, of the following services shall be taxable:

- (2) [p]rocessing. . . tangible personal property, performed for a person who furnishes the Tangible personal property, not purchased for resale, upon which such services are performed; and
- (3) installing Tangible personal property. . . or maintaining, servicing. . . tangible personal property, not held for sale in the regular course of business. . .

Section 1110 imposes use tax on any tangible personal property not acquired for resale, upon which any of the services described in (2) or (3) of section 1105[c], have been performed. For purposes of said section "the tax shall be at 4% of the consideration given or contracted to be given

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for the service. . .plus the cost of transportation. . .except where such cost is separately stated in the written contract, if any, and on the bill rendered to the purchaser."

The property and services the use of which is subject to tax shall include all services rendered to a person within the state, whether or not such services are performed within the state, upon tangible personal property the use of which is subject to tax under §1110 or will become subject to tax when such property is received by or comes into possession or control of such person within the state. (Tax Law, §1131 [4][c]).

In considering the question of the taxability of services performed upon containers holding tangible personal property for sale the Appellate Division held in Niagara Lubricant Company v. State Tax Commission, 120 AD 2d 885, that the contents of the containers were sold but not the containers themselves and thus the services performed upon the containers were subject to sales tax. Similarly in the instant case it is the merchandise and not the tags, labels and hangers that are sold.

Accordingly, the service of placing merchandise on hangers, printing labels, and affixing them, are subject to the sales tax if performed in New York State, in accordance with Sections 1105(c)(2) and 1105(c)(3) of the Tax Law and subject to the compensating use tax in accordance with Section 1110 of the Tax Law if performed outside New York State and later brought into New York State. Since receiving and inspection services are not services which are taxable under Section 1105(c) of the Tax Law, if Petitioner's client separately states such services, they would not be subject to sales or use tax.

DATED: March 16, 1992

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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