

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

TSB-A-96 (71) S
Sales Tax
December 4, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S960709A

On July 9, 1996, a Petition for Advisory Opinion was received from JMF Publishing, 30 Burr Avenue, PO Box 1, New York Mills, New York 13417.

The issue raised by Petitioner, JMF Publishing, is whether it is liable for payment of sales tax on its purchases of tangible personal property or services for printing of brochures and maps which are distributed free of charge to the State of New York.

Petitioner submits the following facts as the basis for this Advisory Opinion. Petitioner produces brochures and maps which promote use of State campgrounds, parks and hiking trails. Petitioner gives the publications free of charge to the State, which distributes the publications free of charge to individuals. Petitioner's revenue is generated from the sale of advertising in the brochures.

Section 1101(b) of the Tax Law provides, in part:

(4) Retail sale. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3), (5), (7) and (8) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax (Emphasis added.)

Section 1105 of the Tax Law provides, in part:

Imposition of sales tax.--On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

* * *

(c) The receipts from every sale, except for resale, of the following services:

* * *

(2) Producing, fabricating, processing, printing or imprinting tangible personal property, performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale, upon which services are performed.

Section 525.2 of the Sales and Use Tax Regulations provides, in part:

(a)(1) The sales tax is imposed on the receipts, unless specifically exempt, from every retail sale of tangible personal property, from every retail sale of specifically enumerated utility services, from every retail sale of other specifically enumerated services

(2) The sales tax is a "transactions tax," liability for the tax occurring at the time of the transaction. Generally speaking, the taxed transaction is an act resulting in the receipt of consideration for the transfer of title, or possession or both to property or rendition of services from one person to another (Emphasis added.)

(3) The sales tax is a "destination tax," that is, the point of delivery or which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate.

(4) The sales tax is a "consumer tax," that is, the tax is imposed on the retail sale of tangible personal property and certain services and is collected from the person who purchases at retail--the consumer (Emphasis added.)

Section 526.6 of the Sales and Use Tax Regulations provides, in part, as follows:

(a) The term retail sale or sale at retail means the sale of tangible personal property to any person for any purpose, except as specifically excluded.

* * *

(b)(4)(i) Tangible personal property which is purchased and given away without charge, for promotion or advertising purposes is not purchased for resale. It is a retail sale to the purchaser thereof, and is not a sale to the recipient of the property. (Emphasis added.)

Section 527.1(a) of the Sales and Use Tax Regulations provides:

Imposition. The sales tax is imposed on the receipts from every retail sale of tangible personal property delivered by the vendor to the purchaser or the purchaser's designee in this State, unless specifically exempt or excluded under the Tax Law.

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In this case, Petitioner produces brochures and maps used to promote campgrounds, parks and hiking in New York State. Petitioner gives the brochures or maps free of charge to the State. Petitioner is not selling tangible personal property. Petitioner is providing an advertising service to businesses by printing advertisements in the brochures being distributed free of charge at various locations operated by the New York State Department of Environmental Conservation. Since Petitioner is not selling the brochures and maps, the tangible personal property and printing or other services which it purchases in order to produce the brochures and maps cannot be purchased for resale. For purposes of Article 28 of the Tax Law, Petitioner is the final user of the property and services purchased and is liable for sales tax on these purchases.

DATED: December 4, 1996

/s/
JOHN W. BARTLETT
Deputy Director
Technical Services Bureau

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