

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

TSB-A-99(41)S
Sales Tax
September 23, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S990504B

On May 4, 1999, the Department of Taxation and Finance received a Petition for Advisory Opinion from Harry Schlachter, 6201 Fifteenth Avenue, Brooklyn, New York 11219.

The issues raised by Petitioner, Harry Schlachter, are:

- 1) Whether the administration of a stock plan as described below is subject to sales tax.
- 2) Whether the purchase of paper used to produce reports in connection with the stock plan is subject to sales tax.
- 3) If the purchase of paper is subject to sales tax, whether Petitioner is eligible for a refund of the sales tax paid on that portion of the paper sent outside of New York State.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner has a client that is an independent provider of stock benefit plan administration services. It offers complete administration of stock option, employee stock purchase and gift and restricted stock plans. The services include, but are not limited to, developing and adopting the plans, coordinating with attorneys to assure quick filing with the SEC, assisting in the development of descriptive materials, administering the plans, recording of plan information and issuing of periodic reports to its corporate clients and its clients' employees. The reports detail plan activity on a company-wide basis, and, in the case of reports issued to employees, cover transactions of the employee under the plan. The information in these reports is confidential and is not furnished to other corporate clients or employees.

Petitioner submitted sample service agreements entered into by its client.

Applicable Law & Regulations

Section 1101(b)(4) of the Tax Law defines, in part, a retail sale as follows:

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 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

Section 1105(a) of the Tax Law imposes a tax upon, "[T]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1119(a) of the Tax Law provides, in part:

Subject to the conditions and limitations provided for herein, a refund or credit shall be allowed for a tax paid pursuant to subdivision (a) of section eleven hundred five or eleven hundred ten . . . (2) on the sale or use of tangible personal property purchased in bulk, or any portion thereof, which is stored and not used by the purchaser or user within this state if that property is subsequently reshipped by such purchaser or user to a point outside this state for use outside this state . . . (4) on the sale or use within this state of tangible personal property, not purchased for resale, if the use of such property in this state is restricted to fabricating such property (including incorporating it into or assembling it with other tangible personal property), processing, printing or imprinting such property and such property is then shipped to a point outside this state for use outside this state

Section 534.3 of the Sales and Use Tax Regulations provides, in part:

Refunds and Credits Based on Certain Uses. (Tax Law, Sec. 1119(a)). (a) *Authorization.* Where a sales or compensating use tax has been correctly, legally, and constitutionally imposed and paid on the purchase of tangible personal property, a refund or credit of State and local taxes paid pursuant to subdivision (a) of section 1105 or section 1110 of the Tax Law on the sale or use will be allowed to the purchaser or user when, to the satisfaction of the Department of Taxation and Finance, the purchaser shows that such tangible personal property was used in one of the following manners:

* * *

(2) the tangible personal property was purchased in bulk, or any portion thereof, stored in New York State and not otherwise used in New York State by the purchaser or user, but was reshipped to a point outside New York by such purchaser or user for use outside of New York State . . .

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TSB-A-99(41)S
Sales Tax
September 23, 1999

(4) the tangible personal property was not purchased for resale, but its use in this state was restricted to fabricating (including incorporating it into or assembling it with other tangible personal property), processing, printing, or imprinting such property, and such property was shipped outside of this State for use outside of this State (see subdivision (e) of this section)

Opinion

While Article 28 of the Tax Law imposes the sales and compensating use tax upon the sale of all tangible personal property with certain exceptions, it only imposes a tax on certain specifically enumerated services. See Section 1105(c) of the Tax Law. The administration of stock plans and issuing of periodic reports respecting such stock plans, as described above, are not specified taxable services and, therefore, are not subject to sales tax.

Since the services rendered by Petitioner's client are not taxable, purchases of paper used by Petitioner's client to print its stock reports are retail purchases subject to tax under Section 1105(a) of the Tax Law. Refunds under Section 1119(a)(2) or (4) of the Tax Law are limited to sales or use tax paid on property the use of which is restricted to storing, fabricating, processing, printing or imprinting, prior to the property being shipped outside New York. Petitioner's client does not use the paper in the manner specified above, but, uses the paper to perform the services described above for its customers. Therefore, Petitioner's client is not eligible for a refund of sales tax paid on any portion of its purchases of paper for use in printing the stock reports.

DATED: September 23, 1999

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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