

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

TSB-H-80(105)S  
Sales Tax  
June 17, 1980

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800319B

On March 19, 1980, a Petition for Advisory Opinion was received from the Cinema Shares International Distrib. Corp., 450 Park Avenue, New York, NY 10022.

The issue raised is whether the reimbursement of an advertising agency for production expenses incurred by them in furnishing to the media layouts, artwork and similar material, incidental to the placement of ads with the media, constitutes taxable transactions.

Petitioner was charged by advertising agencies for production costs incurred by the agencies in conjunction with their placement of ads on behalf of Petitioner. The materials for which the agencies sought reimbursement were used by the agency in placing the ads and were not sold to Petitioner prior to such use.

Section 1105(c)(1) of the Tax Law imposes a tax on the service of furnishing information by printed or mimeographed matter, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons. However, that section excludes "... the services of advertising or other agents, or other persons acting in a representative capacity...."

Section 1105(a) imposes a tax on receipts from every retail sale of tangible personal property, except as otherwise provided.

Section 527.3(b)(5) of the Sales and Use Tax Regulations states that "Fees for the services of advertising agencies or other persons acting in a representative capacity are excluded from the tax. Advertising services consist of consultation and development of advertising campaigns, and placement of advertisements with the media without the transfer of tangible personal property ....Sales of tangible personal property such as layouts, printing plates, catalogs, mailing devices or promotional handouts, tapes or films by an advertising agency for its own account are taxable sales of tangible personal property...."

Example 5: An advertising agency is hired to design an advertising program and to furnish art work and layouts to the media. The fee charged by the agency to its client for this service is not subject to the tax. However, if the layout and art work is sold by the advertising agency prior to use by it to the customer for his use, the advertising agency is making a sale of tangible personal property which is subject to the sales tax."

Advertising agencies are required to pay tax on their purchases of tangible personal property used by them in connection with rendition of advertising services for their clients. Services of advertising agencies are exempt from tax. Transactions which constitute rendition of services include consultation and development and placement of media advertising where the customer does not acquire title to tangible personal property of any nature. In such case, the advertising agency is required to pay tax on all purchases made in connection with the rendering of exempt services.

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Accordingly, the reimbursement of an advertising agency for production expenses incurred by it which includes tangible personal property used by the agency and not sold to Petitioner prior to such use, does not constitute a taxable transaction to Petitioner. Rather, the advertising agency is required to pay the tax on its purchase of the tangible personal property used by it in rendering the exempt service.

Dated: June 3, 1980

s/ MICHAEL ALEXANDER  
Deputy Director  
Technical Services Bureau