

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division

TSB-A-08(1)S
Sales Tax
January 7, 2008

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S070108A

On January 8, 2007, the Department of Taxation and Finance received a Petition for Advisory Opinion from Spot and Company of Manhattan, Inc., 512 7th Avenue, New York, New York 10018-4604.

The issues raised by Petitioner, Spot and Company of Manhattan, Inc., are:

1. Whether its charges to its clients for arranging billboard displays are subject to sales tax.
2. Whether Petitioner's costs in creating billboard posters are subject to sales tax.
3. Whether charges to Petitioner by a third party contractor for installation of the posters on a billboard are subject to sales tax.
4. Whether charges to Petitioner by the owner of the billboard for Petitioner's use of the billboard are subject to sales tax.

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

Petitioner is hired by its clients to arrange billboard displays for its clients' products or services on various billboards in New York City. The billboards may be of a type that are mounted on buildings, installed at subway terminals or bus stops, or installed in subway cars or busses. As part of its services, Petitioner designs the billboard poster for its client, arranges for and pays the third party owner of the billboard to display its client's poster on the billboard, hires a printer to print the billboard posters, and hires a third party contractor to install the posters on the billboards.

Applicable law and regulations

Section 1101(b)(4)(i) of the Tax Law defines the term *retail sale*, in part, to mean:

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. . . .

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 . . . 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:

(1) The furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons, and excluding the services of advertising or other agents, . . .

(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.

(3) Installing tangible personal property . . . or maintaining, servicing or repairing 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, . . .

* * *

(5) Maintaining, servicing or repairing real property, property or land, as such terms are defined in the real property tax law, whether the services are performed in or outside of a building, . . .

Section 526.6(c) of the Sales and Use Tax Regulations provides, in part:

Resale exclusion. (1) Where a person, in the course of his business operations, purchases tangible personal property or services which he intends to sell, either in the form in which purchased, or as a component part of other property or services, the

property or services which he has purchased will be considered as purchased for resale, and therefore not subject to tax until he has transferred the property to his customer.

* * *

(6) Tangible personal property purchased for use in performing services which are taxable under section 1105(c)(1), (2), (3) and (5) of the Tax Law is purchased for resale and not subject to tax at the time of purchase, where the property so sold (i) becomes a physical component part of the property upon which the services are performed, or (ii) is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax.

* * *

(7) Tangible personal property purchased for use in performing a service not subject to tax is not purchased for resale.

Example 10: A shoe repairman purchases leather to be used for resoling shoes. His purchase of the leather is not a purchase for resale, even though the leather will be transferred to the customer in connection with the performance of the service because the service he is performing is not taxable.

Section 527.3(b)(5) of the Sales and Use Tax Regulations provides, in part:

(5) 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. . . .

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 sales tax.

Section 527.3(c)(2) of the Sales and Use Tax Regulations provides:

All purchases of materials by an advertising agency for use in performing its services are purchases at retail subject to sales tax.

Opinion

Issue 1

Petitioner asks whether charges to its clients for arranging billboard displays are subject to sales tax.

In accordance with section 1105(c)(1) of the Tax Law, Petitioner's entire charge to a client for arranging a billboard display is exempt as a charge for the sale of advertising services. There is no sale of tangible personal property to Petitioner's customer. The customer is purchasing a service not subject to sales tax. See *Stillman Advertising Inc.*, Adv Op Comm T & F, May 26, 1988, TSB-A-88(30)S.

Issue 2

Petitioner asks whether its costs in creating the billboard are subject to sales tax.

Petitioner designs the billboard advertisement for its client and hires a printer to print the billboard posters. Since Petitioner is engaged in a service not subject to sales tax, all purchases of tangible personal property used in performing such services are purchases at retail subject to sales tax. Therefore, any purchases by Petitioner of tangible personal property that is used to create its billboards are subject to sales tax under section 1105(a) of the Tax Law. See section 1101(b)(4) of the Tax Law, and sections 526.6(c)(7) and 527.3(c)(2) of the Sales and Use Tax Regulations. Further, Petitioner must pay sales tax on its purchases of any enumerated taxable services under section 1105(c) of the Tax Law, such as printing services taxable under section 1105(c)(2), that are used to perform Petitioner's nontaxable service.

Issue 3

Petitioner asks whether charges to Petitioner by a third party for installation of the posters on a billboard are subject to sales tax.

Petitioner hires a third party contractor to install the posters on the billboards. Installation services are subject to sales tax pursuant to section 1105(c)(3) of the Tax Law. Therefore, charges by a third party to Petitioner for installing Petitioner's posters on billboards are subject to sales tax under section 1105(c)(3) and the third party is required to collect sales tax from Petitioner on its installation charges.

Issue 4

Petitioner asks whether charges to Petitioner by the owner of the billboard for Petitioner's use of the billboard are subject to sales tax.

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Petitioner arranges for and pays the third party owner of the billboard to allow Petitioner to post its client's advertisement on the billboard. Such payments to the third party owner are considered to be purchases of advertising space. Sales of advertising space are advertising services that are not subject to sales tax. See section 1105(c)(1) of the Tax Law, and section 527.3(b)(5) of the Sales and Use Tax Regulations.

DATED: January 7, 2008

/s/
Jonathan Pessen
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Taxpayer Guidance Division

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.