

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

TSB-A-93 (35)S
Sales Tax
May 26, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S930202B

On February 2, 1993 a Petition for Advisory Opinion was received from Penny Lane Printing, Inc., 1471 W. Henrietta Rd., Avon, N.Y. 14414.

The issue raised by Petitioner, Penny Lane Printing Inc., is whether purchases of supplies and equipment are subject to State and local sales tax when such purchases are made by the art/composition department of a printing corporation.

Presently, the art/composition department in question exists in another company that does not produce a product for sale. Petitioner is considering transferring the art/composition department to a company which will produce printed matter for sale.

Section 1105 of the Tax Law states, in part: "Imposition of sales tax.- - ... 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:

(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 such services are performed."

Section 1105-B of the Tax law states, in part: "Reduced tax rates on certain parts, tools, supplies and services relating to tangible personal property used or consumed in production.- - (a) Notwithstanding any other provisions of this article, but not for purposes of the taxes imposed by section eleven hundred seven or eleven hundred eight or authorized pursuant to the authority of article twenty-nine of this chapter, the taxes imposed by subdivision (a) of section eleven hundred five on the receipts from the retail sales of parts with a useful life of one year or less, tools and supplies for use or consumption directly and predominantly in the production of tangible personal property for sale by manufacturing, processing ... shall be paid at the rate of two percent for the period commencing September first, nineteen hundred eighty and ending February twenty-eighth, nineteen hundred eighty-one, and such retail sales shall be exempt from such tax on and after March first, nineteen hundred eighty-one."

Section 1115 of the Tax law states, in part: "Exemptions from sales and use taxes.- - (a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

(12) Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property ... for sale, by manufacturing, processing, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus."

Section 527.4 of the Sales and Use Tax Regulations states, in part: "Sale of services of Producing, fabricating, processing, printing or imprinting. [Tax Law, §1105(c)(2)]

(a) Imposition. (1) Section 1105(c)(2) of the Tax Law imposes on the receipts from services of producing, fabricating, processing, printing or imprinting tangible personal property, performed for a person who directly or indirectly furnishes the property.

(2) The enumerated services are not taxable when:

(i) purchased for resale; or

(ii) performed on property intended for resale.

(3) Furnishing "indirectly" means that items of tangible personal property are supplied to the person performing the enumerated services by an agent or other person on behalf of the customer; or when the items of tangible personal property are not supplied by the person performing the enumerated services at the direction of the customer.

(4) When such services are combined with the sale of property by the person performing the services, the entire transaction is subject to tax as a retail sale.

(e) Printing and imprinting. (1) The services of printing and imprinting tangible personal property furnished by or on behalf of a customer of the printer are taxable under section 1105(c)(2) of the Tax Law; the service of printing or imprinting tangible personal property which is sold by the person performing the service in conjunction with the sale is taxable as part of the sale under section 1105(a) of the Tax Law.

Example 1: A printer prints a form letter on letterhead stationery furnished by his customer. The printer's services are taxable.

Example 2: A firm addresses envelopes furnished by its customer. The addressing services are a taxable printing service.

Example 3: A printer prints business calling cards for his customer, supplying both the card and the service of printing. This is the sale of tangible personal property, the total amount being taxable as such.

Example 4: A corporation has its bonds printed by a printer, and has its supplier furnish the embossed paper to the printer. The printer's services are taxable, whether or not possession of the embossed paper has passed to the corporation, and regardless of the fact that the embossed paper has been supplied to the printer by a third party, on behalf of the corporation.

(f) Resale. (1) When the services enumerated in this section are rendered on property held for resale, the services are not taxable."

Section 528.13 of the Sales and Use Tax Regulations states, in part: "Machinery and equipment used in production; ... parts, tools and supplies. [Tax Law, §1115(a)(12)] (a) Exemption.

(1) Exemption from statewide tax. An exemption is allowed from the tax imposed under subdivisions (a) and (c) of section 1005 (sic) of the Tax Law, and from the compensating use tax imposed under section 1110 of the Tax Law, for receipts from sales of the following:

(i) Machinery or equipment (including parts with a useful life of more than one year) used or consumed directly and predominantly in the production for sale of tangible personal property, ... by manufacturing, processing,

(iii)(a) Parts with a useful life of one year or less, tools or supplies for use or consumption directly and predominantly in the production of tangible personal property, ... for sale by manufacturing, processing ,
....

(2) Exemption from taxes imposed by localities other than New York City.

(i) There is an exemption from all local sales and use taxes, other than the taxes imposed in New York City, for all sales and uses of:

(a) tangible personal property used or consumed directly and predominantly in the production for sale of tangible personal property, ... by manufacturing, processing, ...

(4) An exempt use certificate is used to claim the exemptions from the State and local sales taxes described in this subdivision.

(b) Production. (1) The activities listed in paragraph (a)(1) of this section are classified as administration, production or distribution.

(i) Administration includes activities such as sales promotions, general office work, credit and collection, purchasing, maintenance, transporting, receiving and testing of raw materials and clerical work in production such as preparation of work, production and time records.

(ii) Production includes the production line of the plant starting with the handling and storage of raw materials at the plant site and continuing through the last step of production where the product is finished and packaged for sale.

(iii) Distribution includes all operations subsequent to production, such as storing, displaying, selling, loading and shipping finished products.

(2) The exemption applies only to machinery and equipment used directly and predominantly in the production phase

(c) Directly and predominantly. (1) Directly means the machinery or equipment must, during the production phase of a process:

(i) act upon or effect a change in material to form the product to be sold, or

(ii) have an active causal relationship in the production of the product to be sold, or

(iii) be used in the handling, storage, or conveyance of materials or the product to be sold, or

(iv) be used to place the product to be sold in the package in which it will enter the stream of commerce.

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(4) Machinery or equipment is used predominantly in production, if over 50 percent of its use is directly in the production phase of a process."

New York State Department of Taxation and Finance Publication 842 (2/87), New York State and Local Sales Tax Information for Printers, at page 18, states in part: "... composition, typography (including advertising typography), and progressive proofs are considered equipment and will be exempt from the New York State 4% Sales and Use Tax and any sales and use tax imposed by a locality outside of New York City, provided such equipment is used or consumed directly and predominantly in the production of tangible personal property for sale."

In the instant matter, when Petitioner's company purchases machinery, equipment or supplies for use in printing or imprinting tangible personal property, the machinery, equipment or supplies may qualify for the exemption from tax provided under Sections 1115(a)(12) and 1105(B) of the Tax Law and Section 528.13 of the Sales and Use Tax Regulations.

Where Petitioner's company performs the service of printing or imprinting on items of tangible personal property which will be sold by it and which will not be furnished directly or indirectly by a customer, it will be considered to be using the machinery, equipment and supplies for the purpose of producing tangible personal property for sale. Where Petitioner's company uses the machinery, equipment and supplies directly and predominantly (more than 50 percent of use) to produce tangible personal property for sale, the machinery, equipment and supplies will qualify for the exemption from tax provided under Sections 1115(a)(12) and 1105(B) of the Tax Law, and Sections 528.13(a)(1)(i) and (2)(1)(i) of the Sales and Use Tax Regulations.

However, if Petitioner's company uses the machinery, equipment or supplies directly and predominantly to perform the service of printing or imprinting tangible personal property furnished by or on behalf of a customer, will be using the machinery or equipment to perform a printing service taxable under Section 1105(c)(2) of the Tax Law and not to produce tangible personal property for sale. (See Section 527.4 of the Sales and Use Tax Regulations) Accordingly, in this instance, its purchase of the machinery, equipment or supplies would not qualify for the exemption provided under Section 1115(a)(12) or Section 1105(B) of the Tax Law but would be subject to the tax imposed under Section 1105(a) of the Tax Law.

DATED: May 26, 1993

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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