

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-02(51)S
Sales Tax
November 6, 2002

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S001023A

On October 23, 2000, the Department of Taxation and Finance received a Petition for Advisory Opinion from Henry Goldwasser, CPA, M.R. Weiser & Co. LLP, 135 West 50th Street, New York, NY 10020. Petitioner, Henry Goldwasser, CPA, submitted additional information pertaining to the Petition on November 15, 2000.

The issues raised by Petitioner are:

(1) Whether purchases of uniform shirts, pants, and medical gowns, each costing less than \$110, by a laundry service company qualify for exemption from New York State sales and compensating use tax under Section 1115(a)(30) of the Tax Law if such purchases are delivered to the company's place of business in New York City.

(2) If the company's purchases of uniform shirts, pants, and medical gowns delivered in New York City qualify for exemption from New York State and local sales taxes under Section 1115(a)(30) of the Tax Law, is the company liable for local use tax on the use of such items in localities outside of New York City?

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

A company is in the laundry service business. The company purchases a high volume of inexpensive, low-cost uniform shirts, pants, and medical gowns from suppliers and then supplies its customers with these items in order to provide the service of laundering these items and delivering fresh ones, generally on a weekly basis. Patients, in doctor's offices and other medical facilities, wear the gowns during medical examinations or treatment. Each gown is worn by one patient and then sent back to the company for laundering. All of the items are interchangeable, and one may be used in place of another for any given customer. Thus, the company has no means of tracking exactly when and where each particular item is delivered from week to week.

The uniforms and medical gowns are not sold to the company's customers. They remain the company's property. The company has been paying sales or use tax on its purchases of uniforms and medical gowns.

Each piece of a uniform is separately purchased. No uniform, piece of a uniform, or medical gown costs \$110 or more when separately purchased. They are delivered to the company at its place of business in New York City.

Applicable Law and Regulations

Section 1101(b)(7) of the Tax Law defines “use,” in part, as:

The exercise of any right or power over tangible personal property or over any of the services which are subject to tax under section eleven hundred ten of this article or pursuant to the authority of article twenty-nine of this chapter, by the purchaser thereof, and includes, but is not limited to, the receiving, storage or any keeping or retention for any length of time, withdrawal from storage . . . or any consumption of such property or of any such service subject to tax under such section eleven hundred ten or pursuant to the authority of such article twenty-nine.
. . .

Section 1101(b)(15) of the Tax Law defines “clothing and footwear,” in part, as:

. . . Clothing and footwear to be worn by human beings, but not including costumes or rented formal wear. . . .

Section 1105 of the Tax Law provides, 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:

* * *

(3) . . . 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, except:

* * *

(ii) any receipts from laundering, dry-cleaning, tailoring, weaving, pressing. . . .

Section 1107 of the Tax Law provides, in part:

(a) General. On the first day of the first month following the month in which a municipal assistance corporation is created under article ten of the public authorities law for a city of one million or more, in addition to the taxes imposed by sections eleven hundred five and eleven hundred ten, there is hereby imposed on such date, within the territorial limits of such city, and there shall be paid, additional taxes, at the rate of four percent, which except as provided in subdivisions (b) and (d) of this section, shall be identical to the taxes imposed by sections eleven hundred five and eleven hundred ten. . . .

(b) Exceptions . . . (9) Except as otherwise provided by law, the exemption provided for in paragraph thirty of subdivision (a) of section eleven hundred fifteen relating to clothing and footwear shall not apply.

Section 1109 of the Tax Law provides, in part:

* * *

(f) The exemption contained in paragraph thirty of subdivision (a) of section eleven hundred fifteen of this article shall not apply.

(g) Notwithstanding any other provision of state or local law, ordinance or resolution to the contrary: (1) in the event that a county, city or school district located in the metropolitan commuter transportation district imposes taxes pursuant to the authority of subpart B of part I of article twenty-nine of this chapter and elects to provide the clothing and footwear exemption authorized in paragraph one of subdivision (a) of section twelve hundred ten of this chapter, or a city located in such district in which the taxes provided for in section eleven hundred seven of this article are in effect elects to provide such clothing and footwear exemption from such taxes pursuant to the authority of subdivision (k) of such section twelve hundred ten . . . the exemption provided by paragraph thirty of subdivision (a) of section eleven hundred fifteen of this chapter shall be applicable in such portion of the metropolitan commuter transportation district in which such county, city or school district which elects to provide the clothing and footwear exemption authorized in paragraph one of subdivision (a) of section twelve hundred ten of this chapter is located, or in a city located in such district in which the taxes provided for in section eleven hundred seven of this article are in effect which elects to provide such exemption. . . .

Section 1110(a) of the Tax Law provides, in part:

Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state . . . except as otherwise exempted under this article, (A) of any tangible personal property purchased at retail. . . .

Section 1115 of the Tax Law provides, in part:

(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:

* * *

(30) Clothing and footwear for which the receipt or consideration given or contracted to be given is less than one hundred ten dollars per article of clothing, per pair of shoes or other articles of footwear or per item used or consumed to make or repair such clothing and which becomes a physical component part of such clothing.

Section 1210 of the Tax Law provides, in part:

. . . any city in this state or county in this state, except a county wholly within a city, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws, ordinance or resolutions imposing in any such city or county the following taxes . . .

(a)(1) Either, all of the taxes described in article twenty-eight of this chapter, at the same uniform rate, as to which taxes all provisions of the local laws, ordinances or resolutions imposing such taxes shall be identical, except as to rate and except as otherwise provided herein, with the corresponding provisions in such article twenty-eight, including the definition and exemption provisions of such article, so far as the provisions of such article twenty-eight can be made applicable to the taxes imposed by such city or county and with such limitations and special provisions as are set forth in this article. However, any local law enacted by any city of one million or more, imposing the taxes authorized by this subdivision . . . may omit (A) the exception provided in paragraph three of subdivision (c) of section eleven hundred five for receipts from laundering, dry-cleaning, tailoring, weaving, pressing. . . . Any local law, ordinance or resolution enacted by any city, county or school district, imposing the taxes authorized by this subdivision, shall omit the clothing and footwear exemption provided for in paragraph thirty of subdivision (a) of section eleven hundred fifteen, unless such city, county or school district elects otherwise. . . . (Emphasis added)

(2) A sale of tangible personal property to a person for use by him in performing the services of laundering, drycleaning, tailoring, weaving, pressing . . . subject to the tax imposed under the authority of paragraph (1) of this subdivision, shall not be deemed a purchase for resale. . . .

* * *

(k). . . Any city having a population of one million or more in which the taxes imposed by section eleven hundred seven of this chapter are in effect, acting through its local legislative body, is hereby authorized and empowered to elect to provide the exemption from such taxes for the same clothing and footwear exempt from state sales and compensating use taxes described in paragraph thirty of subdivision (a) of section eleven hundred fifteen of this chapter . . . such enactment of such resolution shall be deemed to be an amendment to such section eleven hundred seven and such section eleven hundred seven shall be deemed to incorporate such exemption as if it had been duly enacted by the state legislature and approved by the governor. (Emphasis added)

Technical Services Bureau Memorandum TSB-M-01(02)S, dated February 12, 2001, entitled Sales and Use Tax Exemption on Clothing, Footwear, and Items Used to Make or Repair Exempt Clothing, provides, in part:

Beginning March 1, 2000, clothing and footwear costing less than \$110 per item is exempt from the 4% New York State sales and compensating use taxes. This exemption does not apply to any locally imposed sales and use taxes unless the county or city imposing those taxes elects to provide for it. . . . Likewise, the exemption does not apply to the 1/4% tax imposed by the State in any portion of the Metropolitan Computer Transportation District (MCTD), unless the county or city in the MCTD provides an exemption from its own tax, in which case the exemption will also apply to the 1/4% MCTD tax in that county or city. The MCTD consists of the city of New York and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester.

Opinion

The company Petitioner describes provides a uniform and medical gown supply and laundering service. Petitioner states that the company only supplies uniforms and medical gowns to its customers in order to perform its service, generally on a weekly basis, of picking up soiled items, laundering them, and delivering clean ones.

Tangible personal property, such as uniforms and medical gowns, purchased for use in performing a laundering service that is not subject to tax are not purchased for resale and are

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therefore not excluded from sales or compensating use tax under Section 1101(b)(4)(i) of the Tax Law. See Matter of Atlas Linen Supply Co., Inc. v Chu, 149 AD2d 824; Matter of Linen Systems for Hospitals, Inc., Dec Tax App Trib, August 24, 1989, TSB-D-89(47)S. See also Section 526.6(c)(7) of the Sales and Use Tax Regulations. However, effective March 1, 2000, clothing costing less than \$110 per item is exempt from the 4% New York State sales and compensating use taxes. See Section 1115(a)(30) of the Tax Law. TSB-M-00(1)S, supra, contains a partial list of clothing and footwear items that are taxable or exempt. Uniforms (occupational, military, scouting, sport) are listed as exempt items in TSB-M-00(1)S, supra, and are not taxed for New York State sales tax purposes, if the uniforms cost less than \$110 each. Medical gowns are similar to some of the other products listed as exempt items in TSB-M-00(1)S, supra, such as lab coats, pajamas, robes, and sleepwear. Accordingly, the company's purchases of uniforms and medical gowns costing less than \$110 per item are not subject to the 4% New York State sales or compensating use tax.

Local jurisdictions are also authorized to enact the clothing and footwear exemption. See Sections 1210(a)(1) and (k) of the Tax Law. Likewise, there is an exemption from the 1/4% tax imposed in cities and counties located in the Metropolitan Commuter Transportation District (MCTD), if the city or county in the MCTD provides an exemption from its own tax. See Section 1109(g) of the Tax Law. New York State Department of Taxation and Finance Publication 718-C, Local Sales and Use Tax Rates on Clothing and Footwear, 9/02, provides information on where the local tax (and the MCTD 1/4% tax) is applicable. New York City has enacted the clothing and footwear exemption and is currently a location where no tax applies. Therefore, since the uniforms and medical gowns in this case are delivered to the company's place of business in New York City, purchases of such uniforms and medical gowns are not subject to the 4% local portion (New York City) of the sales tax nor to the 1/4% MCTD sales tax imposed in this area.

With regard to Issue (2), the delivery to and pick-up of uniforms and medical gowns from customers located in cities and counties which have not enacted local clothing and footwear exemptions constitutes a use by the company in such jurisdictions within the meaning and intent of Section 1101(b)(7) of the Tax Law. See Matter of Coyne Industrial Laundry of Schenectady, Inc., State Tax Commission, July 1, 1983, TSB-H-83(128)S. The company, in the conduct of business there, is a resident of such jurisdictions. See Section 526.15(b)(2) and (c) of the Sales and Use Tax Regulations. Accordingly, the company's use of the uniforms and medical gowns in jurisdictions which have not enacted local clothing and footwear exemptions is subject to the compensating use tax imposed under Section 1110 of the Tax Law at the local rates set forth in Publication 718-C, supra, as well as the 1/4% tax imposed in jurisdictions located in the MCTD area

In this case the uniforms and medical gowns are fungible and interchangeable and the nature of their use is such that it is impossible to effectively and efficiently track the actual use of each item of clothing in any particular locality. Under these circumstances, in the absence of other evidence showing that particular items are used in particular jurisdictions, the Department will accept a reasonable allocation based on the company's volume of business in the different localities to

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establish the respective jurisdictions in which the items are used. For example, assume that, for every 10,000 items of clothing the company purchases, 2000 pieces of clothing are routinely used in Nassau County (4 1/2 % rate), 7000 pieces in New York City (exempts clothing), and 1000 pieces in Orange County (3 1/4 % rate). In this example, given the circumstances here, the Department would accept an allocation under which 20% of the clothing is subject to tax at the Nassau County rate of 4 1/2 % and 10% of the clothing is subject to tax at the Orange County rate of 3 1/4 %.

DATED: November 6, 2002

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