

**New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit**

TSB-A-14(9)S
Sales Tax
May 27, 2014

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S121220B

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether its sale of a bundle of infant diapers and diaper components, which individually are exempt from sales and compensating use taxes, is also exempt though priced above the clothing and footwear exemption limit. We conclude that Petitioner's retail sale of the bundle of individually exempt articles for a price of \$110 or more is not taxable, given that all the components of the bundle, which are sold separately for less than \$110 each, are exempt.

Facts

Petitioner sells an infant diaper made up of several components. These are an organic hemp diaper, a hemp "booster" insert to increase the absorbency of the original diaper, a soft disposable diaper liner, and a cover into which the various pieces snap. When sold individually, each of the components is priced under \$110. The Petitioner also sells a bundle consisting of groups of varying quantities of the four components, for a retail price of \$269.95.

Analysis

Tax Law § 1105(a) imposes sales tax on the "receipts from every retail sale of tangible personal property, except as otherwise provided in this article." Tax Law § 1115(a)(30) exempts from that tax clothing, footwear, and items used to make or repair exempt clothing which is sold for less than \$110 per item or pair of shoes. *See also* Publication 718-C. Children's diapers, including disposable diapers, and underwear are each considered to be items of clothing that, when sold for less than \$110 per item, are exempt. *See* TSB-M-06(6)S. The four diaper components Petitioner sells individually are each exempt articles of clothing priced under the exemption's monetary threshold of \$110, and are not subject to tax. The bundled package Petitioner sells at retail for \$269.95 also is

not subject to tax because the price of each article in the bundle, when sold separately, is priced under the monetary threshold of \$110. Therefore, the whole bundle is exempt.

DATED: May 27, 2014

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.