

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

TSB-A-88(19)S
Sales Tax
February 29, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S871013A

On October 13, 1987, a request for Advisory Opinion was received from M.R. Weiser & Co., C.P.A.'s, 535 Fifth Avenue, New York, New York 10017.

Petitioner requests an opinion as to the application of sales tax to certain types of tangible personal property used for and in packaging.

Petitioner describes the transactions as follows:

A carton manufacturer designs and sells point of sale display materials made out of corrugated packaging materials. The displays are used by stores such as supermarkets to favorably display products which they sell. The carton manufacturer sells the displays to the manufacturers of the products which are sold in supermarkets. A supermarket obtains the display when it purchases the products which it sells. For example, the display material could be sold to a pet food manufacturer. The display is ultimately transferred to the supermarket when it buys pet food for sale to its customers. The display is used by the supermarket to house and display the product, which is the pet food.

Two distinct types of displays are sold, both of which are transferred to the purchaser. One type is inserted into the boxes in which the pet food is packaged. The supermarket ---

- (1) opens the boxes;
- (2) removes the display;
- (3) attaches the display to the box; and
- (4) places the box in the view of the shoppers.

The product remains in the same boxes that were used for shipment to the supermarket. The riser which had been inserted in the box, is removed from the box and is attached as a display for the purpose of attracting the attention of the public.

A second type of display is as follows: The product, for example pet food, is shipped to the supermarket in boxes. The boxes are first used for the purpose of packaging and shipping the product. The secondary use of the box is as a display. The lid of the box itself unfolds into an attractive display for the purpose of displaying the product in the supermarket. Unlike the first type of display the second type is not a separate piece which is inserted into the box. It is a part of the box used for shipping the product, although it is also used to display the product.

Section 1105(a) of the Tax Law imposes a tax on the sale of tangible personal property while §1115(a)(19) exempts "[c]artons, containers, and wrapping and packaging materials and supplies..."

Section 528.20(b)(1) of the sales tax regulations defines packaging material:

(b) Definitions. (1) Packaging material includes, but is not limited to: bags, barrels, baskets, binding, bottles, boxes, cans, carboys, cartons, cellophane, coating and preservative materials, cores, crates, cylinders, drums, excelsior, glue, gummed labels, gummed tape, kegs, lumber used for blocking, pails, pallets, reels, sacks, spools, staples, strapping, string, tape, twine, wax paper and wrapping paper actually transferred with the product to the purchaser.

A carton which is used to ship a product and which is subsequently used to display that product is considered packaging material which is exempt under §1115(a)(19) of the Tax Law notwithstanding its subsequent use as a display. Any tangible personal property such as a display, which is neither packing material nor an integral part of the carton that contains the product, does not fall within the scope of §1115(a)(19) and is therefore subject to tax.

Accordingly, the first type of display described above is subject to sales and use tax when sold by the carton manufacturer while the second type of display described above is exempt from sales and use tax pursuant to section 1115(a)(19) of the Tax Law when sold by the carton manufacturer.

DATED: February 29, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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