

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

TSB-A-96 (63) S  
Sales Tax  
October 2, 1996

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S960402C

On April 2, 1996, a Petition for Advisory Opinion was received from The Apparel Group, Ltd., P.O. Box 32100, Louisville, Kentucky 40232-2100.

The issues raised by Petitioner, The Apparel Group, Ltd., are whether:

1. The cost of soft patterns or materials used to create soft patterns is subject to New York sales or use tax; and
2. Materials purchased to create an experimental prototype are subject to New York sales or use tax?

Petitioner provides the following facts. Petitioner is a manufacturer and distributor in the apparel industry. Petitioner sells clothing under several different brand names to retailers, including company owned retail stores. In the early stages of the manufacturing process, after designers create concepts for clothing designs, a soft pattern is produced. This soft pattern is used to create an experimental prototype. The prototype is a sample garment which is tested and necessary in order to finalize the design of the clothing prior to the actual production of the garment. The process is termed "product development." The prototype is made with numerous materials, including fabrics of various colors and textures, buttons, zippers, Velcro, etc.

The prototype is utilized to determine if the article of clothing can be made as originally designed. For example, a shirt may be constructed with a pocket or collar of a certain size. The process insures the proportions are proper and enables Petitioner to revise the design prior to production. If the design of the prototype is not functional, then the soft pattern is corrected and adjusted. Experimenting with various shapes and size patterns allows Petitioner to develop the best "fit," and therefore, a better product. Once the desired soft pattern is obtained, it is used to create a hard pattern. The hard pattern is used to cut materials into the specified shapes needed to manufacture the garment.

Petitioner contends that the cost of the soft pattern (generally purchased from outside vendors) and the materials used in creating the prototype should be exempt from sales and use tax as tangible personal property purchased for use directly and predominantly in research and development of new products and/or to improve existing products. The soft pattern together with the prototype allows Petitioner the opportunity to improve and correct any problems or deficiencies that may surface prior to the mass production of the garment. Consequently, the primary purpose of the soft pattern and prototype is either for the development of new products or the improvement of existing products.

According to Petitioner, the soft pattern and prototype are integral parts of the production process. The final product could not be produced without the interim stage of product development. While the designers are capable of creating a concept, there are aspects of the garment

which cannot be determined until a prototype is actually created. The prototype is tested under various conditions to determine certain qualities such as: durability; fit; whether a garment is waterproof; warmth under varying temperature conditions; and strength and resilience during laundering. For example, if the garment was designed to be waterproof, Petitioner will experiment with different types of fabrics to determine the fabric best suited for this purpose. Therefore, it is necessary to complete the product development stage prior to mass production. The prototype is used exclusively during the development stage of the product.

Section 115(a)(10) of the Tax Law provides an exemption from the sales tax for:

Tangible personal property purchased for use or consumption directly and predominantly in research and development in the experimental or laboratory sense. Such research and development shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects.

Section 528.11 of the Sales Tax Regulations state in part:

(b)...(1) Research and development in the experimental or laboratory sense means research which has its ultimate goal:

- (i) basic research in a scientific or technical field of endeavor;
- (ii) advancing the technology in a scientific or technical field of endeavor;
- (iii) the development of new products;
- (iv) the improvement of existing products;
- (v) the development of new uses for existing products.

(2) Research and development in the experimental or laboratory sense does not include:

- (i) testing or inspection of materials or products for quality control (for machinery and equipment used for quality control in the production of products for sale, see section 528.13 of this Part);
- (ii) efficiency surveys;
- (iii) management studies;
- (iv) consumer surveys, advertising and promotions; and
- (v) research in connection with literary, historical or similar projects.

(c)...(1) Direct use in research and development means actual use in the research and development operation. Tangible personal property for direct use would broadly include materials worked on, and machinery, equipment and supplies used to perform the actual research and development work. Usage in activities collateral to the actual research and development process is not deemed to be use directly in research and development.

(2) Tangible personal property is used predominantly in research and development if over 50 percent of the time it is used directly in such function.

To the extent that soft patterns and materials used in creating prototypes are used to perform research to develop new products or improve existing products, they fall within the meaning of regulation section 528.11(b)(1). However, to qualify for exemption, the soft patterns and materials used to create the prototype must be used predominantly (over 50% of the time) in research and development. If the soft patterns and prototypes are used more than 50% of the time in activities other than research, they will not qualify for exemption. For example, the use of prototypes to conduct efficiency surveys, consumer surveys etc. which are designed and developed to obtain information relative to the acceptance of the garments by consumers in the marketplace would not be deemed to be used predominantly in research and development. Additionally, the soft patterns and prototypes must be used directly in research and development. Usage in activities collateral to research and development does not qualify as research and development.

Accordingly, where the soft patterns and materials used to create the soft patterns and prototypes to test for quality and performance standards or improve and correct any problems or deficiencies of the garment prior to manufacturing the garment, are used directly and predominantly (more than 50% of the time) for qualified purposes, they will qualify for the exemption provided by section 115(a)(10) of the Tax Law.

DATED: October 2, 1996

/s/  
John W. Bartlett  
Deputy Director  
Technical Services Bureau

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