

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

TSB-H-81 (122) S
Sales Tax
June 24, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810323C

On March 23, 1981, a Petition for Advisory Opinion was submitted by Lanz's Motel, Inc., R.D. #1-Box 73, Clayton, New York 13624.

The issue raised is whether Petitioner's purchases of items such as plastic or paper cups, bathroom tissue and guest soap which are placed in motel rooms for the use of guests are subject to sales tax. Petitioner states that these items are "re-sold" to guests because the cost of these items are included in the amounts charged for the rooms. Petitioner also suggests that these items should be considered material used in the production of a salable item and, therefore, exempt from sales tax.

Section 1105(a) of the Tax Law imposes a sales tax on the "...receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1101(b)(4) of the Tax Law defines the term "retail sale", in relevant part, as a "...sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or (B) for use ... in performing the services subject to tax under paragraphs (1), (2), (3) and (5) of subdivision (c) of section eleven hundred five ..." Petitioner's charges to guests are charges for the rental of motel rooms, taxable pursuant to 1105(e) of the Tax Law. Petitioner does not sell the items in question as such, nor as a physical component part of tangible personal property, nor does Petitioner use these items to perform any of the services taxed pursuant to Section 1105(c) of the Tax Law. Therefore, Petitioner's purchases are not excluded from taxation as purchases for resale. This conclusion is in accord with section 527.9(i)(2) of the Sales and Use Tax Regulations, which specifically states that purchases by a hotel of soap, paper products and other supplies used in the operation of a hotel are subject to tax. 20 NYCRR 527.9(i)(2).

Several sections of the Tax Law provide exemptions from tax with respect to sales of various items used in production, but all require the production of either tangible personal property or gas, electricity, refrigeration or steam for sale. Petitioner is not engaged in the production of any of the above. Accordingly, its purchases of the items in question do not qualify for exemption as purchases for use in production.

DATED: June 9, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau

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