

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). Petitioner asks whether retail sales of mitten clips are subject to sales tax in New York State.

We conclude that Petitioner's sales of mitten clips are subject to sales tax in New York State.

Facts

Petitioner sells mitten clips. Petitioner states that the mitten clips are used to attach the gloves or mittens of infants and toddlers to their coats so they will not lose them. Also, Petitioner mentions that the mitten clips are used by women in a manner similar to suspenders, to keep pants up by clipping the pants to bras and securing other pieces of clothing, such as blouses.

Analysis

Tax Law §1105(a) imposes a tax on every retail sale of tangible personal property. Mitten clips are tangible personal property because they consist of material physical objects as opposed to non-corporeal property. *See* Tax Law §1101(b)(6).

Tax Law §1115(a)(30) exempts clothing and footwear costing less than \$110 from the imposition of sales tax and the compensating use tax. Items used to make or repair such clothing that become a physical component part of such clothing are also exempt from sales and use tax.

Mitten clips themselves are not clothing. Not all items worn on the body qualify as clothing and footwear, and mitten clips do not fall within any exempt items specifically delineated by the Department. *See* TSB-M-06(6)S. Thus, the crux of Petitioner's question is whether the mitten clips become a physical component part of the clothing to which they are attached. The Tax Appeals Tribunal in *Matter of Petition of Gem Stores, Inc.*, (Tax Appeals Tribunal, October 14, 1988) pondered the definition of "physical component part" in a matter not involving clothing. The Tribunal found that the word "component" is defined as "serving, or helping to constitute, constituent" and that "constituent" is defined as "that which constitutes as a part, or an essential part, a component, an element." The Tribunal found that "[c]learly implicit in these definitions is that components and constituents held for retail sale are, from the

customer's perspective, more than unrelated or unwanted physical appendages." *Gem Stores* at 6. (citations omitted).

Mitten clips used in the manner outlined by the Petitioner are essentially accessories and not physical components or constituent parts of the clothing to which they are attached. Unlike zippers or snaps, for example, mitten clips do not become a physical component part of the clothing. Furthermore, they are readily removable rather than being sewn into a garment.

Therefore, Petitioner's sale of mitten clips, regardless of the manner in which they are used, do not fall within the exemption provided by Tax Law §1115(a)(30) and, as such, are subject to New York sales and use tax.

DATED: June 23, 2020

/S/

DEBORAH R. LIEBMAN

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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.

