

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

TSB-A-82(22)S  
Sales Tax  
June 18, 1982

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S811118B

On November 18, 1981, a Petition for Advisory Opinion was received from AAR Technical Service Center, 747 Zeckendorf Blvd., Garden City, New York 11530.

The issue raised is whether the purchase of packaging materials used in the packaging of overhauled aircraft components are subject to sales tax.

Petitioner is engaged in the overhauling of aircraft components. When work on a unit is completed, it is placed into a plastic bag. The unit and plastic bag are then placed in a carton. Foam is then poured into the carton, where it hardens to form a protective mold. Additional plastic is placed in the carton and more foam is added to complete the mold. The carton is then sealed with gummed tape, labeled and sent to the customer.

Section 1105(a) of the Tax Law imposes the State sales tax on the ". . . receipts from every retail sale of tangible personal property . . ." The term "retail sale" is defined, in relevant part, as a sale 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 by that person in performing the services subject to tax under paragraphs (1), (2), (3) and (5) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax." Tax Law, §1101(b) (4) (i).

The Sales and Use Tax Regulations provide as follows, with regard to the foregoing:

"Cartons, containers, and other packaging materials actually transferred to a customer in conjunction with performance of a service subject to tax under sections 1105(c)(1), (2), (3) and (5) of the Tax Law are excluded from sales tax as purchased for resale. . . .

Example 3: A watch repairman packs a watch in a box, with cushioning material to return it to his customer. The box and packing material is not taxable. 20 NYCRR 528.20(a)(2).

"Tangible personal property purchased for use in performing a service not subject to tax is not purchased for resale." 20 NYCRR 526.6(c)(7).

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"Packaging material includes, but is not limited to' bags, barrels, baskets, bindings, 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 " 20 NYCRR 528.20(b) (1).

Petitioner performs the service of overhauling aircraft components. Such constitutes the service of "maintaining, servicing or repairing tangible personal property not held for sale in the regular course of business," the receipts from which are subject to tax under section 1105(c)(3) of the Tax Law, except with respect to "such services rendered with respect to commercial aircraft primarily engaged in intrastate, interstate or foreign commerce, machinery or equipment to be installed on such aircraft and property used by or purchased for the use of such aircraft for maintenance and repairs. . . ." Tax Law, §1105(c)(3).

Petitioner's repair service is subject to tax when performed with respect to component parts of aircraft other than commercial aircraft primarily engaged in intrastate, interstate or foreign commerce. Cartons, containers and other packaging materials (including plastic bags, foam, gummed tape and labels) used by Petitioner as described above are purchased by Petitioner for resale and are not subject to tax. 20 NYCRR 528.20(a)(2); 528.20(b)(1). However, where such materials are used by Petitioner to package components of commercial aircraft primarily engaged in intrastate, interstate or foreign commerce, the materials are not purchased for resale and they are subject to tax. In order to determine which category particular aircraft fall into, Petitioner may consult Technical Services Bulletin TSB-M-80(4)S.

Petitioner may use a Direct Payment Permit (Form ST-123) to avoid the necessity of paying sales tax at the time of purchase, where it is uncertain at the time of purchase whether the materials will be used in a manner which would render the transaction subject to tax. Use of a Direct Payment Permit relieves the vendor of his obligation to collect tax and would permit Petitioner subsequently to pay tax, directly to the State Tax Commission, only upon those packaging materials which are subject to tax, as described above.

DATED: June 1, 1982

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau