

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

TSB-A-88 (42)S
Sales Tax
August 31, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S880329A

On March 29, 1988, a Petition for Advisory Opinion was received from Express Printing Co., 237 Lafayette Street, New York, New York 10122.

The issue raised is whether a refund or credit of sales tax may be obtained which Petitioner contends was paid on machinery and equipment used directly and predominantly to produce tangible personal property for sale.

On October 2, 1981 as a result of an audit, the Audit Division of the Department of Taxation and Finance issued two notices of determination and demands for payment of sales and use taxes due against Petitioner covering the periods March 1, 1975 through August 31, 1978 and September 1, 1978 through May 31, 1980 for taxes due of \$11,302.76 and \$7,162.33, respectively, plus accrued interest.

On February 7, 1984, Petitioner was granted a hearing concerning the above assessments and on December 5, 1986, a decision was rendered which cancelled the first assessment and sustained the second assessment. It is the second assessment in the amount of \$7,162.33 for which Petitioner is now claiming a refund.

Petitioner contends that this tax represents the New York City local sales tax of 4%. Under the New York State and local (other than New York City) sales tax (Articles 28 and 29 of the Tax Law), machinery and equipment used directly and predominantly to produce tangible personal property for sale, is exempt from tax. Such machinery and equipment is subject to the 4% New York City sales tax.

However, the City of New York grants a credit against its corporation and unincorporated business taxes for the amount of New York City sales tax paid on such machinery and equipment. The New York State Department of Taxation and Finance does not administer the New York City corporation and unincorporated business taxes. Petitioner must contact the New York City Department of Finance to claim the New York City credit.

Additionally, section 1139(c) of the Tax Law provides that:

[A] person shall not be entitled to a refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section eleven hundred thirty-eight where he has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself of the remedies therein provided....

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Since Petitioner has had a hearing as provided for in §1138 of the Tax Law, he is not entitled to a refund or credit from New York State with respect to any sales or use tax, interest or penalty which was determined to be due pursuant to such hearing.

DATED: August 31, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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