

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

TSB-A-96 (24)S
Sales Tax
April 25, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S930611D

On June 11, 1993, a Petition for Advisory Opinion was received from Table Wraps, Ltd., 666 Cantiague Road, Jericho, New York 11753.

The issue raised is whether Petitioner, Table Wraps, Ltd., sells at retail a "laundering" service within the meaning of Section 1105(c)(3)(ii) of the Tax Law or whether Petitioner rents table linens to customers.

Petitioner makes the following submission of facts.

Petitioner is engaged in the business of manufacturing and then providing custom-made linens to its customers. Pursuant to its standard agreement, Petitioner delivers the table linen to the customer for the customer's use, and retrieves it when the customer is finished. Petitioner charges the customer a flat fee based on the duration of the agreement and the type of table linen at issue.

Under the terms of the standard agreement, once the table linen has been returned to Petitioner, the agreement between Petitioner and the customer terminates. Neither Petitioner nor the customer owes any additional obligation to each other. Petitioner is under no obligation to return clean table linen to the customer. In fact, Petitioner is under no contractual obligation to clean any table linen under any circumstances.

In most cases, before soiled table linen is returned to inventory, Petitioner does have the table linen cleaned. In cases where the soiled table linen is not returned to inventory (e.g., because it is no longer fit for use), Petitioner does not have the table linen cleaned. The only laundering which takes place is performed by Petitioner on its own account for the sole purpose of maintaining its inventory.

The cleaning costs incurred by Petitioner after the table linens are returned at the expiration of the customer agreement are not itemized in the invoice to the customer. The cleaning cost attributable to each item cleaned by Petitioner represents a small fraction of Petitioner's cost of doing business. Overall, the cost of cleaning soiled table linens is slightly more than 5% on average of Petitioner's total cost of sales. In contrast, the value of the table linen itself with respect to the price charged the customer represents almost 95% of the overall cost of sales.

Petitioner does not provide any table linens for extended terms. Customers generally use linens for a special occasion, such as a wedding, anniversary, or other party. Many hours are expended selecting the appropriate fabric, colors, designs and coordinated combinations. The price reflects the nature of the fabric and the particular design selected. Many of the specialty linens must be discarded after only one or two customer agreements because of the delicacy of

the fabric. No customers are under a long-term or continuous contract with Petitioner. Each contract is for one isolated use and is of limited duration, typically one or two days.

Section 1101 of the Tax Law states, in part:

Definitions

(b) When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

(4) Retail sale. (i) 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 by that person in performing the services subject to tax under paragraphs (1), (2), (3), (5), (7) and (8) 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

(5) Sale, selling or purchase. Any transfer of title or possession or both, ... rental, lease or license to use or consume ... conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor.

Section 1105 of the Tax Law states, in part:

Imposition of sales tax . . . there is hereby imposed and there shall be paid a tax of four percent upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

* * *

(c) The receipts from every sale, except for resale, of the following services:

(3) Installing tangible personal property, or maintaining, servicing or repairing tangible personal property, ... not held for sale in the regular course of business, whether or not the services are performed

directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith, except:

* * *

(ii) any receipts from laundering, dry-cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining; (emphasis added)

Section 527.8(f)(2) of the Sales and Use Tax Regulations provides as follows:

(2) Purchases by caterers. (i) Self-use. Taxable tangible personal property or services used or consumed by a caterer in performing catering services are not purchased for resale as such and are subject to tax. Examples of such taxable property are: tables, tents, chairs, bars, linens, napkins, silverware, glassware, chinaware, serving utensils, table covers, ice used to chill food or drinks before serving, as well as floral arrangements not purchased in accordance with the conditions set forth in subparagraph (v) of this paragraph. (Emphasis added)

Linen services are considered to be exempt laundering and dry-cleaning services if the service agreement provides for return of the linen articles periodically for laundering or dry-cleaning and replacing the articles with clean linens. The value of the article of tangible personal property furnished typically is insubstantial compared with the charge for the service rendered so that the major portion of the charge made is for laundering or dry-cleaning service. See Linen Systems for Hospitals, Inc., Adv Op STC, September 25, 1981 TSB-A-81(14)S.

In Atlas Linen Supply Company, Inc. v Chu, 149 A.D.2d 824, the Court found that although contracts between the taxpayer and some hospitals contained aspects of rental arrangements, no contract for price per item laundering actually split the stated price into component parts of laundering services and rental charges. To the contrary, evidence supported a finding that the taxpayer's provision of linens to some of its hospital customers was essentially part of the taxpayer's laundering service rather than a separate rental transaction. In Matter of Linen Systems for Hospitals, Inc., Decision of Tax Appeals Tribunal, August 24, 1989, the Tax Appeals Tribunal followed the reasoning in Atlas. Even though the taxpayer in Linen Systems established a separate cost of the linens of 17 to 20.05 percent of the total revenues, the Tribunal concluded that this was not sufficient to overcome the application and result of the Appellate Division's decision in Atlas.

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The facts presented by Petitioner in this case are distinguishable from the facts in Atlas and Linen Systems. The service Petitioner provides is distinguishable from the type of linen service considered to be a laundering or dry-cleaning service. Petitioner's contracts with its customers are of limited duration, typically one or two days. Petitioner does not contract with its customers to pick up the linens periodically for cleaning and to replace dirty linens with clean linens. The fee charged to customers is based on the nature of the fabric, the particular design selected and the duration of the lease. None of Petitioner's customers are under a long-term or continuous contract. It is also noted that Petitioner's laundry costs represented only slightly more than 5% on average of Petitioner's total cost of sales, while the cost of the table linen represented almost 95% of the cost of sales.

Accordingly, Petitioner is not performing an exempt laundering service. Petitioner does not supply linens on a continual basis to its customers, or periodically replace the soiled linens with clean linens. Petitioner's receipts from charges to customers do not qualify for the exclusion from sales tax provided under Section 1105(c)(3)(ii) of the Tax Law. Petitioner is considered to be renting table linens to customers. Section 527.8(f)(2) of the Sales and Use Tax Regulations states that the purchase of tangible personal property, including linens, by a caterer for use in catering an event is not a purchase for resale and is subject to the sales tax. Accordingly, rentals of linens to caterers or other customers are considered to be retail sales of tangible personal property as defined under Section 1101(b)(4) of the Tax Law and the receipts from the rentals are subject to the tax imposed under Section 1105(a) of the Tax Law.

Since Petitioner is renting table linens to its customers, Petitioner's purchases of cloth for the manufacture of table linens are purchases for resale. These purchases qualify for the exclusion from tax provided under Section 1101(b)(4)(i)(A) of the Tax Law. When Petitioner makes purchases of cloth, Petitioner should issue the supplier a properly completed form ST-120, Resale Certificate.

DATED: April 25, 1996

/s/
Doris S. Bauman
Director
Technical Services Bureau

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