

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

TSB-A-97(21)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S960702A

On July 2, 1996, the Department of Taxation and Finance received a Petition for Advisory Opinion from The Leshner Corporation, P.O. Box 179, Hamilton, OH 45012-0179.

The issue raised by Petitioner is whether artwork purchased for use in weaving a design into terry products that Petitioner manufactures is exempt from the sales and use tax.

Petitioner presents the following facts.

Petitioner is a manufacturer of textile products, including terry products. Terry products include bath towels, kitchen towels, hand towels, washcloths, bath sheets, etc., which are manufactured at plant facilities in Alabama and Georgia.

Some terry products have an associated design that is an integral part of the product. This could be a purely graphical representation, such as a drawing of a flower, or continuous geometric representation, such as the stripe on a towel.

Two processes are utilized in producing the design on the terry product.

Some products are printed with dyes in a classic multicolor silkscreen process. In the silkscreen process, the design is broken into a number of patterns, each representing an individual color. This process is either done manually or through a computer-aided-design program on a PC. These individual patterns are then sent to Petitioner's manufacturing plant, where individual silk screens are prepared through a photochemical process. In manufacturing, the products are sent through a printing machine where each screen ultimately pigments its individual pattern on the product. The superimposition of all of the patterns results in the original design, in color, being printed onto the product.

In other products, individual yarn (i.e., thread) is dyed a specific color, and the specific manufacturing machinery is set up to produce the design through the warping and weaving processes. The warping and weaving method can produce either the geometric designs (e.g., stripes and borders), or the graphical designs (e.g., towels that have the logo of a lodging establishment or the name of a medical institution woven into the towel). Because the yarn is permanently dyed, designs imprinted by means of warping and weaving have a longer useful life and maintain quality longer than those imprinted by the silkscreen process.

Warping is the process of laying individual continuous ends of yarn lengthwise, which may be used to provide a lengthwise component of color. Weaving is taking multiple warps and passing and interlocking fill yarn widthwise through the lengthwise ends of the warps.

The designs, or mechanicals, are originated in one of two ways by Petitioner. Either they are purchased from outside design houses, or they are created at Petitioner's design studio in New York. Where a design is imprinted by the warping and weaving process, the design is placed into production by way of a construction sheet. In conjunction with the company design studio, the design on the mechanical is segregated and measured into its component elements. For example, individual colors are determined, and the number, placement, type, and sequence of individual yarn is noted on the construction sheet. The construction sheet is utilized by factory production personnel for determining what colors need to be dyed into yarn, and for then setting up the warping and weaving machinery so that the design on the mechanical is accurately reproduced into the weave of the terry product.

In both the silkscreen and warping and weaving processes, a design, or mechanical, is obtained. In both, the colors and patterns of those colors must be ascertained, and converted into data. In the case of silkscreening, that information is the individual color patterns. In the case of weaving and warping, that information is specific set-up data on the construction sheet. Without the mechanical drawing, the image cannot be reproduced into the terry product.

Applicable Law and Regulations

Section 1115 of the Tax Law provides, in part, as follows:

Sec. 1115. Exemptions from sales and use taxes.--(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(12) Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, ... for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, ... but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus. ...

Section 528.13 of the Sales and Use Tax Regulations provides, in part, as follows:

Reg. Sec. 528.13. Machinery and equipment used in production; telephone and telegraph equipment; parts, tools and supplies--(Tax Law, Sec. 1115(a)(12)). (a) Exemption. (1) Exemption from statewide tax. An exemption is allowed from the tax imposed under subdivisions (a) and (c) of section 1105 of the Tax Law, and from the compensating use tax imposed under section 1110 of the Tax Law, for receipts from sales of the following:

(i) Machinery or equipment (including parts with a useful life of more than one year) used or consumed directly and predominantly in the production for sale of tangible personal property, gas, electricity, refrigeration or steam, by manufacturing, processing, generating, assembling, refining, mining or extracting. ...

* * *

(c) Directly and predominantly. (1) "Directly" means the machinery or equipment must, during the production phase of a process:

(i) act upon or effect a change in material to form the product to be sold, or

(ii) have an active causal relationship in the production of the product to be sold, or

(iii) be used in the handling, storage, or conveyance of materials or the product to be sold, or

(iv) be used to place the product to be sold in the package in which it will enter the stream of commerce.

* * *

(4) Machinery or equipment is used predominantly in production, if over 50 percent of its use is directly in the production phase of a process.

Opinion

Whether the artwork in question is used in the silkscreen or the warping and weaving processes, the artwork being purchased will be converted into specific data to produce the textile products for sale. According to New York State Department of Taxation and Finance Publication 842 (12/93), New York State and Local Sales Tax Information for Printers, at page 27, purchases of artwork, illustrations, layouts, drawings, paintings, mechanicals, overlays, designs, photographs, pasteups and onionskin by a printing company and used or consumed directly and predominantly to produce printed material for sale qualify for the production exemption. Accordingly, while the purchaser is not a printing company per se, both the printing process and Petitioner's manufacturing processes are similar and the artwork in each case is used or consumed by the purchaser directly and predominantly to produce the textile products for sale. See The

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Design Council, Ltd., Adv Op Comm T&F, June 28, 1995, TSB-A-95(23)S, David Berdon & Co. LLP, Adv Op Comm T&F, September 23, 1996, TSB-A-96(56)S. Therefore, the purchase by Petitioner of the artwork described qualifies for the production exemption from sales and use taxes provided by Section 1115(a)(12) of the Tax Law.

DATED: April 3, 1997

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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