

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

TSB-A-97(62)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S970710A

On July 10, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from Price Chopper Operating Co., Inc., P.O. Box 1074, Schenectady, NY 12301.

The issue raised by Petitioner, Price Chopper Operating Co., Inc., is whether its purchases of printers, toner cartridges and paper for use in its pharmacies to produce prescription drug labels and medical information which accompany the sale of prescription drugs are subject to State and local sales and use taxes.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner operates pharmacies within its retail supermarket locations. Petitioner purchases printers and supplies (i.e., toner cartridges and paper) which are used to produce prescription drug labels which are attached to the prescription drug containers which are sold to customers. In addition, medical information pamphlets are produced and placed in the bag or are stapled to the bag containing the drug container. These pamphlets contain the name of the medication dispensed, the name and telephone number of the pharmacist, information about the medication, its proper use and its effects and side effects. This information is too detailed to be included on the label affixed to the drug container itself. The printers are used exclusively to produce the prescription drug labels and the medical information pamphlets.

Applicable Law and Regulations

Section 1105(a) of the Tax Law imposes a tax on the "receipts from every retail sale of tangible personal property"

Section 1101(b)(4)(i) of the Tax Law defines "retail sale," in part, as follows:

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.

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, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, or telephone central office equipment or station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication, 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. . . .(emphasis added)

With respect to the resale exclusion, Section 526.6(c) of the Sales and Use Tax Regulations provides, in part:

(1) Where a person, in the course of his business operations, purchases tangible personal property or services which he intends to sell, either in the form in which purchased, or as a component part of other property or services, the property or services which he has purchased will be considered as purchased for resale and therefore not subject to tax until he has transferred the property to his customer.

(2) A sale for resale will be recognized only if the vendor receives a properly completed resale certificate

(3) Receipts from the sale of property purchased under a resale certificate are not subject to tax at the time of purchase by the person who will resell the property. The receipts are subject to tax at the time of the retail sale.

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

(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

In Matter of Gem Stores, Inc., Tx App Trib Dec., October 14, 1988, TSB-D-88(30)S, the Tribunal stated that a label becomes a critical element of the product sold if the label has a critical quality useful to the final customer and is not just an expense or part of the general overhead which the retailer chooses in order to profitably carry on its business.

In this case, Petitioner states that it purchases printers and supplies used exclusively to produce prescription drug labels which are affixed to the prescription drug containers when sold to the customers, as well as medical information pamphlets which are placed in the bag containing the drug containers or stapled to the bag. These pamphlets provide additional information which because of space constraints cannot be included on the labels affixed to the drug container.

In accordance with Matter of Gem Stores, Inc., supra, a label is a critical element of the product sold, if it has a critical quality useful to the final customer and is not just an expense or part of the general overhead which the retailer chooses in order to profitably carry on its business. The labels and pamphlets produced by Petitioner do form a critical element of the product sold, i.e., the medication. The label and accompanying pamphlet contain critical information which is useful to the customer for proper usage of the medication. Since the toner and paper will become a component part of the tangible personal property sold to the consumer, i.e., the label and accompanying medical information pamphlet, pursuant to Section 1101(b)(4)(i) of the Tax Law and Section 526.6(c) of the Sales and Use Tax Regulations the toner and paper may be purchased for resale. In addition, since the printer will be used exclusively in the production of labels and medical information pamphlets, the printer will be deemed to be used directly and predominantly in the production of tangible personal property for sale and pursuant to Section 1115(a)(12) of the Tax Law may be purchased exempt from sales and use taxes.

DATED: September 29, 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.