

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

TSB-A-99(54)S  
Sales Tax  
November 30, 1999

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S990920A

On September 20, 1999, the Department of Taxation and Finance received a Petition for Advisory Opinion from Jim Axford, 6 Rippleton Road, Cazenovia, NY 13035.

The issue raised by Petitioner, Jim Axford, is whether purchases of soap, shampoo, jam, jelly and wine by a bed and breakfast establishment that are offered on a complimentary basis to guests are subject to New York State and local sales and use taxes.

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

Petitioner is opening a new bed and breakfast. Petitioner purchases soap, shampoo, wine, jam, jellies and the like, which will be used or consumed by the guests during their stay at the bed and breakfast. Petitioner offers these items to the guests on a complimentary basis. Petitioner will not charge guests for any of these items at any time.

**Applicable Law and Regulations**

Section 1101(b)(4)(i) defines retail sale, in part, as:

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  
. . .

Section 1105(a) of the Tax Law imposes sales tax upon “[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article.”

Section 1105(d)(i) of the Tax Law imposes a tax on “[t]he receipts from every sale of beer, wine or other alcoholic beverages or any other drink of any nature, or from every sale of food and drink of any nature or of food alone, when sold in or by restaurants, taverns or other establishments in this state. . . .”

Section 526.6(c) of the Sales and Use Tax Regulations provides, in part:

(1) Resale Exclusion. 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.

\* \* \*

(4)(i) Tangible personal property which is purchased and given away without charge, for promotion or advertising purposes is not purchased for resale. It is a retail sale to the purchaser thereof, and is not a sale to the recipient of the property. (ii) Tangible personal property which is purchased for promotional or advertising purposes and sold for a minimal charge which does not reflect its true cost, or which is not ordinarily sold by that person in the operation of his business, is a retail sale to the purchaser thereof, and not a sale to the recipient of the property. (iii) A resale certificate may not be used by the person making the purchases described in subparagraphs (i) and (ii) of this paragraph for such purchases.

Section 527.9(i)(2) of the Sales and Use Tax Regulations provides:

The following are examples of purchases made by hotels which are subject to tax:

- (i) Fuel, gas, electricity, steam, telephony and telegraphy and other utilities.
- (ii) Furniture used in guest rooms and elsewhere.
- (iii) Soap, paper products and other supplies used in the operation of the hotel; and
- (iv) Items which will be used for recreational purposes, such as golf carts, pool chairs or other recreational equipment.

### **Opinion**

In First Colony Company, Adv Op Comm T & F, March 1, 1999, TSB-A-99(13)S the opinion held that the serving of complimentary cocktails by the petitioner to its customers, where no payment is received for providing the cocktails, is not subject to the sales tax imposed by Section 1105(a) of the Tax Law. However, the petitioner's purchase of tangible personal property, such as alcoholic beverages and mixers, to produce the drinks would be subject to State and local sales or compensating use taxes.

In this case, Petitioner is purchasing soaps, shampoos, jams, jellies, and wines, etc., solely for the purpose of offering these items to the guests on a complimentary basis. The purchase of

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items such as soap, paper products and other supplies by a hotel or motel are not deemed to be purchased for resale since such items are deemed to be consumed in the course of the operation of a hotel or motel. See Matter of Helmsley Enterprises, Inc. v. Tax Appeals Tribunal, 187 AD2d 64; Section 527.9(i)(2) of the Sales and Use Tax Regulations. Pursuant to Section 526.6(c)(4) of the Sales and Use Tax Regulations tangible personal property such as complimentary jam, jelly or wine, which is purchased and given away without charge for promotion or advertising purposes is not purchased for resale. See First Colony Company, supra. Accordingly, Petitioner's purchases of soaps, shampoos, jams, jellies, wines and the like, solely for the purpose of offering these items to the guests on a complimentary basis are retail sales to the Petitioner and are, therefore, subject to sales tax under Section 1105(a) of the Tax Law at the time of purchase. It should be noted that purchases of food items, such as jam and jelly, are exempt from sales tax under Section 1115(a)(1) of the Tax Law.

DATED: November 30, 1999

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

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