

**New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit**

TSB-A-15(19)S
Sales Tax
May 12, 2015

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S131115A

The Department of Taxation and Finance received a Petition for an Advisory Opinion from [REDACTED] “Petitioner”. Petitioner asks whether it is engaged in a laundry service and whether the garments it rents to outpatient medical facilities and hospitals (“Customers”) and certain other tangible personal property may be purchased for resale. Petitioner also asks whether its charges for monogramming uniforms and fees for lost or unreturned items are subject to sales and use tax.

We conclude that Petitioner is a laundry service and may not purchase for resale the items that it launders, such as garments and linens. Purchases of other tangible items that are not laundered, such as hampers and lockers, may be purchased for resale. We further conclude that charges for monogramming that is incidental to the laundry service are not taxable. Finally, the fees charged for items lost by the Customers are not subject to sales tax.

Facts

Petitioner rents “full service items”, such as uniforms, hospital gowns, mats, linens (sheets, towels etc.) and other textiles to its Customers for a predetermined rental fee based on the number of items those Customers agree to have available on site. Full service items are those items that are laundered, maintained, picked up and delivered by Petitioner. Full service items that are not personalized, such as sheets and towels, are laundered at the processing facility and returned to the general operating inventory for redistribution. These items are not segregated for a specific Customer. Only personalized items are segregated for exclusive use by a particular Customer. The charges for laundry, pick-up and delivery services for these items are included in the rental charge; they are not billed separately. The rental fee remains the same regardless of the actual usage of those items.

Petitioner also rents hampers, lockers, and other items of tangible personal property that are used for the storage and delivery of the textiles. Petitioner states that the rental price for these items incorporates “all costs for the service program.” The services provided relative to the hampers and lockers only include maintenance and replacement of items as necessary, at no additional cost. Petitioner does not clean or sanitize these items. At the end of the agreement or upon termination of the agreement, the Customer always returns these items; they are never purchased. The Customers do not rent lockers or hampers without renting textiles, because the option to rent those items is part of Petitioner’s program to store and maintain the textiles being rented. The Customers determine the number of those items that they choose to rent, but are not obligated to rent any of these items. Further, the use of those items is not restricted to the storage

of the rented textiles. These items are not available for purchase by the Customers. The rental charges for the selected items are priced per item in the Customer Service Agreement.

The Customers also have the option of having logos or names embroidered on uniforms for an additional monogramming fee. This monogramming generally is done by Petitioner. Large orders occasionally may be outsourced, but this is not standard practice.

The Customers are required to enter into a five year customer service agreement. Delivery and pick-up of the rental items for the purpose of laundering can be on a weekly, bi-weekly or monthly basis. The rental agreement provides that all textiles and other rented items remain the property of the Petitioner, and that all “full-service items” will be provided, laundered, maintained, picked-up, and delivered by the Petitioner. Items requiring replacement based on normal wear are replaced without charge. However, items otherwise damaged or lost incur a predetermined lost item fee based on the replacement cost of the item. In addition, upon discontinuation of the service prior to the expiration of the agreement or upon termination of the agreement for any reason, the Customer is obligated to purchase all customized items, at the replacement cost specified in the agreement. The non-personalized items are returned to the general operating inventory of Petitioner and made available for use by other Customers.

Analysis

Tax Law § 1105 (a) imposes a tax on the retail sale of every item of tangible personal property sold within this State, unless the Tax Law specifically provides an exclusion or exemption from sales and use tax applicable to such item. The rental or lease of tangible personal property is included within the definition of “retail sale.” *See* Tax Law § 1101(b)(5).

Tangible personal property purchased exclusively for resale (including rentals) is not subject to sales tax at the time of purchase. *See* Tax Law § 1101(b)(4); *Matter of EchoStar Satellite Corp. v. Tax Appeals Trib.*, 20 NY3d 286 (2012). However, the fees charged for the subsequent sale or rental of that property generally is subject to sales tax, unless an exemption applies. *Id.*

Tax Law § 1105(c)(3)(ii) provides a specific exemption for laundry services. In addition to the actual charge for laundering, the Court in *Matter of Atlas Linen Supply Co. v. State Tax Commn.* (149 AD2d 824, 825, (3rd Dept.1989) found that receipts from supplying linens incident to a laundry service are not subject to tax as the rental of tangible personal property, because such rentals fall under the laundry service exclusion. The Court held that where operations are “inseparably connected” to each other, they are not considered separate transactions for tax purposes. The Court further found that the vendors were not “reselling” taxable personal property, but rather using such property to perform an exempt service. Therefore, tangible personal property purchased only for use in performing an exempt service, such as laundering, is not considered to be purchased for resale and therefore is not exempt from sales tax. *See* 20 NYCRR § 526.6(c)(7).

However, simply being “inseparably connected” to a service is not always enough to prevent an item from being deemed a separate transaction for sales tax purposes. The Court of Appeals in *EchoStar* found that certain items necessary to provide EchoStar’s satellite service

were acquired for the purpose of rental and, as such, they were resale purchases within the meaning of the statute. *See* 20 NY3d 286 (2012), citing *Matter of Albany Calcium Light Co.*, 44 NY2d 987 (1978) and *Galileo Int'l P'ship v Tax Appeals Tribunal*, 31 AD3d 1072, 1074-75, (3rd Dep't 2006). The Court found in *EchoStar* that, even though the equipment rented in conjunction with the provision of satellite service could not be used for any other purpose, it still qualified for the resale exclusion because: the equipment was not merely incidental to the service, the customer agreements were structured as leases, the equipment rental fees were directly proportional to the number of items provided, and the equipment charges were separately delineated on monthly invoices. *See EchoStar*, 20 NY3d at 292.

Here, Petitioner provides garments, linens and other textiles to its Customers for an established fee, which includes laundry services. Although Petitioner characterizes its service as a rental, Customers may not rent these items without engaging the laundry service and non-personalized items are part of the general inventory and are not set aside for the exclusive use by any particular Customer. Further, the rental charge for the textiles is not stated separately from the laundry charges. The mere characterization of an agreement as a rental is not conclusive, if the nature of the transaction would indicate otherwise. *See Greene & Kellogg, Inc. v. Chu*, 134 AD2d 755 (3d Dep't 1987). In this instance, the fee charged is not based solely on the rental value of the items without taking into account the value of the laundry service. For example, by the terms of the rental agreement, if the agreement is terminated or service is discontinued, the Customer is required to purchase all customized items for the full replacement cost. The agreement does not provide for any prorated credit based on the previously paid rentals. Therefore where the Customer actually purchases the "rented" articles for full replacement cost, the past rental payments are credited solely to the laundry and delivery services.

Although Petitioner's provision of linens to the Customers are characterized as "rentals" in the customer agreement and the rental fee is proportional to the linens provided, the fees charged to the Customers for laundering and delivering those linens are included in the rental fee and are not separately stated. Based on the holding in *Atlas* noted above, the provision of linens is incidental to a laundry service, falling under the laundry service exclusion. Therefore, such items are not purchased for resale. Hence, the purchase of these items is subject to sales tax at the time of purchase by Petitioner. To the extent that Petitioner's purchases are articles of clothing, those items would be exempt from New York state sales tax if the price per item is less than \$110. It should be noted that local sales tax may still apply to articles of clothing exempt from New York State sales tax. *See Publication 718-C, Sales and Use Tax Rates on Clothing and Footwear.*

The Petitioner also characterizes its provision of hampers, lockers and mats as rentals. These rentals incur a fee that is separately stated in the agreement. Although these items are not rented independently of the laundry services, and are not available to the Customer for outright purchase, Customers determine the number, if any, of these items they require and may rent additional items to use for other purposes unrelated to the garment and linen rentals. Consequently, the rental of hampers and lockers and other tangible items can be characterized as rentals not integral to the laundry service, and therefore may be purchased by Petitioner for resale. Therefore, Petitioner must collect sales tax on its receipts from its rentals of such property.

Although monogrammed garments generally are items of tangible personal property subject to sales tax, where a laundry service applies a monogram to garments that are provided only in conjunction with such service, the monogram, like the garment, is not a separate “sale” and is treated as incidental to the laundry service. See TSB-M-06-(6)(S). Therefore the monogramming fee charged by Petitioner is not subject to sales or use tax.

Finally, we conclude that the lost item fee is not subject to sales tax. The Division of Tax Appeals in *Matter of Tristate Industrial Laundries Inc.* (1989 WL 138593) found that a fee for a predetermined lost or unreturned item was actually a penalty for losing the item, not a sale. Because the purpose of charging a fee for unreturned items is to deter loss or theft of the items and does not anticipate the sale of those items, the fee is not subject to sales tax. However, any charge Petitioner imposed on a Customer for customized items would be subject to sales tax whether the charge is made because the contract was terminated before its stated end date, or because the customer wished to purchase those items after the end of the contract period. To the extent that those items are articles of clothing, those items would be exempt from New York state sales tax if the price per item is less than \$110. It should be noted that local sales tax may still apply to articles of clothing exempt from New York State sales tax. See Publication 718-C, *supra*.

DATED: May 12, 2015

/S/

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