

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

TSB-A-81(41)S
Sales Tax
October 28, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810422A

On April 22, 1981, a Petition for Advisory Opinion was received from Victor LaSala, 85 Peconic Drive, Massapequa, New York 11758.

This petition raises two issues: (1) whether the purchase of the following items by Petitioner are subject to sales tax-film used in shooting photo assignments, processing services of another laboratory; paper and chemicals used in producing the finished print; frames purchased for resale; cameras, lenses and processing equipment; and (2), whether Petitioner's charges for the following services are subject to sales tax-photographic printing; the framing of photo prints; and photographer's services, both in his studio and on location.

Petitioner is in the business of photography and photographic printing. Petitioner purchases film to use in photographic assignments, thereafter furnishing his customers with either the finished prints or slides, or the original negatives, or both.

Petitioner makes prints from negatives and slides some of which he produces and some of which are supplied by his customers. Petitioner purchases photographic paper and chemicals which he uses to produce prints for his customers. In some instances Petitioner purchases processing services from independent laboratories. Petitioner also purchases frames which are resold as part of the finished product.

Section 1105(a) of the Tax Law imposes a tax on the receipts from retail sales of tangible personal property, except when purchased for resale. Similarly, Section 1105(c) imposes a tax on certain services, including the processing of tangible personal property which has been furnished by the customer, except when such services are purchased for resale.

Section 1115(a)(12) of the Tax Law exempts from tax: "Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property . . . for sale, by manufacturing, processing . . . 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." The Sales and Use Tax Regulations provide that "Machinery or equipment is used predominantly in production, if over 50% of its use is directly in the production phase of a process." 20 NYCRR 528.13(c)

Section 1105-B of the Tax Law provides a phase-out of the statewide tax on purchases of certain parts, tools and supplies used or consumed in production. Subdivision (a) of such section states: " . . . receipts from the retail sales of parts with a useful life of one year or less, tools, supplies . . . for use or consumption directly and predominantly in the production of tangible personal property . . . for sale by manufacturing, processing . . . shall be . . . exempt from such tax on and after

March first, nineteen hundred eighty-one." Similarly, Section 1105-B provides that with respect to purchases of such items made between September 1, 1980 and February 28, 1981, the statewide tax shall be two per cent. The tax imposed within the City of New York is not affected by this phase-out and these items continue to remain exempt from taxes imposed by all other localities.

Petitioner's development of negatives from film furnished by the customer constitutes the rendition of a service subject to tax pursuant to section 1105(c)(2) of the Tax Law; however, the subsequent printing of photographs from such negatives represents the production of tangible personal property for sale. When Petitioner develops negatives from its own film and prints photographs therefrom, the entire process constitutes the production of tangible personal property for sale.

Accordingly, cameras, lenses, developing equipment and processing equipment purchased by Petitioner fall within the ambit of section 1115(a)(12), provided the equipment is used directly and predominantly (more than 50% of use) in developing negatives from Petitioner's own film and printing photographs for sale. In this instance, Petitioner may purchase such equipment tax exempt by issuing a properly completed Exempt Use Certificate (ST-121) to the supplier. However, if Petitioner is predominantly developing negatives from film furnished by its customers, the development equipment is not eligible for tax exemption pursuant to section 1115(a)(12). In this situation, only the equipment used in the printing of photographs and cameras, lenses and related equipment may be purchased tax exempt by issuance of a properly completed Exempt Use Certificate (ST-121) to the supplier.

Petitioner's purchases of items of tangible personal property which become a physical component part of the final product transferred to customers may be made tax exempt, for resale, by issuance of a properly completed Resale Certificate (Form ST-120) to the supplier, in the case of the sale of prints with which the negatives are also transferred to the customer, the following may be purchased for resale, film, processing services of an independent laboratory, photographic paper and picture frames.

Film used by Petitioner to develop its own negatives which will not be transferred to the customer as part of the sale of photographs is exempt pursuant to sections 1115(a)(12) and 1105-B of the Tax Law.

Similarly, Petitioner's purchases of chemicals which become actual detectable physical components of the finished product which is ultimately transferred to the customer may be made tax exempt, for resale. A listing of photographic products has been prepared by the Department of Taxation and Finance for use as a guideline to assist persons in the photography industry in determining whether or not specific chemicals are transferred to the customer with the finished product. See Technical Services Bureau memorandum TSB-M-79(4)S. Chemicals which do not become actual detectable physical components of the finished product transferred to the customer are classified as supplies pursuant to the manufacturing exemption provided by Section 1115(a)(12). Thus, the provisions of Section 1105-B apply to the purchase of such chemicals.

Petitioner's charge for the printing and framing of photographs is taxable pursuant to Section 1105(c). Petitioner's charge for the service of taking a photograph, either in the studio or on location, is not taxable if the customer does not purchase a photograph. However, when such charge, whether

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or not separately stated, is a component of the sale of a negative, slide or finished print, Petitioner is making a retail sale of tangible personal property pursuant to Section 1105(a) and tax must be collected on the total price therefor.

DATED: October 7, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau