

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

TSB-A-82(1)S
Sales Tax
January 11, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810526D

On May 26, 1981, a Petition for Advisory Opinion was received from Polychrome Corporation, 137 Alexander Street, Yonkers, New York 10702.

The issues raised are whether Petitioner must collect sales tax on sales of chemicals, miscellaneous items, equipment and equipment parts sold to printers located outside New York City, and whether Petitioner must pay sales tax on purchases of certain items for use in Petitioner's manufacturing operations in Yonkers.

Petitioner is a manufacturer of lithographic plates and film for the printing industry, and of a full range of other supplies used by printers.

Section 1105(a) of the Tax Law imposes the State sales tax on the ". . . receipts from every retail sale of tangible personal property, except as otherwise provided in this article." Section 1115(a)(12) of the Tax Law provides for an exemption from such tax with respect to "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." However, section 1105-B(a) of the Tax Law provides for an exemption, effective since March 1, 1981, with respect to retail sales of those parts, tools and supplies excluded from the operation of section 1115(a)(12) of the Tax Law. These exemptions do not apply to the New York City sales tax imposed under section 1107(a) of the Tax Law. Local sales tax laws are required to exempt "all sales of tangible personal property for use or consumption directly and predominantly in the production of tangible personal property for sale, by manufacturing, processing . . ." Tax Law, §1210(a)(1).

Sales of equipment, equipment parts and of the items listed below, where for use or consumption directly and predominantly in the production of tangible personal property for sale by manufacturing or processing, provided Petitioner's customers furnish it with properly completed Exempt Use Certificates (Form ST-121), and further provided such sales are made outside New York City, will be exempt from State and local sales taxes, pursuant to sections 1105-B, 1115(a)(12), 1108 and 1210(a) of the Tax Law:

Chemicals

Benzol Alcohol
Dupli-Sol
Pro-Sol
Gum
Plate Cleaner

Glaze Off Solution
Developer
Conditioner
Replenisher

Miscellaneous:

Chemical Applicator	Blanket Wash
Applicator Tray	Film Cleaner
Plastic Bottle	Roller Wash
Putty Knife	Type Wash
Ruler	Letterplate Wash
Razor Blades	Screen Tints
Magnifier	Photo Film Chemicals
Glass Cleaner	Hose Dispenser
Sponge	Brush Opaquing
Tapes	Tape Dispenser
Electrostatic Mats	Film Trays
Electrostatic Solution	Lith-pad
Universal Etch	Cheesecloth
Dupli Etch	Polywipes
Pencil Eraser	Appli-Pads
Correction Fluid	Blankets
Blanket Fix	Chrome Guide
Clean-Up Sheets	Molletons
Toner	Masking Sheets

It is to be noted that chemicals which are transferred to the printers' customers in the form of detectable traces in the printers' products are considered to have been purchased for resale, and are thus excluded from the definition of the term "retail sale" contained in section 1101(b)(4) of the Tax Law and, accordingly, are exempt from State, local and New York City sales taxes. In order to avail themselves of this exclusion Petitioner's customers must furnish it with properly completed Resale Certificates (Form ST-120).

Petitioner's sales of hand cleaner and aprons constitute sales of supply items which are not used directly and predominantly in the production of tangible personal property for sale. Accordingly, these sales are subject to State and local sales taxes.

Petitioner's purchases of electric motors to run machines and assembly lines, pumps used in conjunction with machinery in the production process, bearings for machines, belts used to drive machines, filters used in chemical processes in production, and electrical supplies used for machine motors on assembly lines are considered to be purchases of machine parts for use directly and predominantly in the production of tangible personal property for sale by manufacturing. In those cases where the parts have a useful life of more than one year, the purchases will be exempt from state and local sales taxes under the provisions of section 1115(a)(12) of the Tax Law. In those cases where the parts have a useful life of one year or less, the purchases will be exempt from state and local sales taxes under the provisions of section 1105-B of the Tax Law. However, in either case, if delivery occurs within New York City the transactions will be subject to the New York City tax of 4% imposed pursuant to section 1107 of the Tax Law.

Petitioner also purchases steel to be used on its production line for chemical containers and tanks (including covers therefor), cutting tables, machine enclosures, safety devices and maintenance

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of manufacturing machinery and equipment. Steel used for such purposes constitutes production equipment, the purchase of which is exempt from State and local sales and use taxes pursuant to sections 1115(a)(12), 1108 and 1210(a) of the Tax Law. Purchases of industrial wipers by Petitioner for use in cleaning plates and wiping down production machines and equipment are considered to be purchases of supplies for use directly and predominantly in the production of tangible personal property for sale within the meaning of section 1105-B of the Tax Law. These purchases are thus exempt from State and local sales and use taxes. However, in both instances, if delivery of these items occurs within New York City, the purchases will be subject to the New York City tax of 4% imposed pursuant to section 1107 of the Tax Law.

Petitioner's purchases of electrical supplies and janitorial supplies which are used for purposes other than direct and predominant use in the production process are subject to State and local sales taxes pursuant to the provisions of section 1105(a) of the Tax Law.

DATED: December 22, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau