

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

TSB-A-92 (29) S
Sales Tax
March 31, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920228A

On February 28, 1992 a Petition for Advisory Opinion was received from Morton L. Coren, P.C., 638 Meadow Court, Westbury, New York 11590.

The issue raised by Petitioner, Morton L. Coren, P.C., is whether the purchase by Petitioner's client, a large retail merchant, of single part "price tickets" attached to merchandise and garments for sale are subject to the imposition of sales tax.

Petitioner's client, a large retail merchant who operates within New York State, is engaged in the retail sale of merchandise and garments. The merchant attaches "price tickets" to the merchandise and garments for sale and the entire ticket remains with the item when the item is sold.

In the past a multi-part price ticket was in use by many retail stores. Part of the ticket was removed at the time of sale and retained by the vendor to keep track of the merchandise sold in more detail than was possible on the cash registers then in use. Part of the ticket may also have been removed when inventory was taken.

Recent developments in computer technology have resulted in use of POS (Point of Sale) terminals. These terminals have replaced cash registers at many retail stores. The details of the transaction are entered into the POS terminal at the time of sale and are recorded and processed from the entered data.

POS terminals have enabled retailers to eliminate many laborious steps formerly necessary to keep track of sales. Multi-part price tickets are no longer used. With the development of POS terminals came single part price labels that remain with the merchandise. These labels are securely attached and cannot be easily removed. The label remains with the merchandise like any other label. The label includes information of value to the purchaser such as size, brand and return information. Petitioner's client is now purchasing these single part price tickets and attaching them to the merchandise being sold.

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 1115(a)(15) of the Tax Law provides an exemption from the sales tax imposed by Section 1105(a) of the Tax Law for "[C]artons, containers, and wrapping and packaging materials and supplies, and components thereof for use and consumption by a vendor in packaging or packing tangible personal property for sale, and actually transferred by the vendor to the purchaser."

Section 528.20(b)(1) of the Sales and Use Tax Regulations provides that:

Packaging material includes, but is not limited to: bags, barrels, baskets, binding, bottles, boxes, cans, carboys, cartons, cellophane, coating and preservative materials, cores, crates, cylinders, drums, excelsior, glue, gummed labels, gummed tape, kegs, lumber used for blocking, pails, pallets, reels, sacks, spools, staples, strapping, string, tape, twine, wax paper and wrapping paper actually transferred with the product to the purchaser.

New York State and Local Sales Tax Information For Manufacturers, Publication 852 (9/86), at page 16 notes that "[E]xamples of taxable items are: . . . Price, size, style, lot number, and inspection tickets and tags which are used in selling the product. . . ."

The price tickets which Petitioner's client attaches to its merchandise and garments are not a critical element of the products sold and do not add to their value. They are affixed by the vendor solely for use in selling the products and recording the transactions through POS terminals for fiscal and administrative purposes. Therefore the purchase of the price tickets by Petitioner's client is not exempt from the imposition of sales tax in accordance with the provisions of Section 1115(a)(15) of the Tax Law, Section 528.20(b)(1) of the Sales and Use Tax Regulations and New York State and Local Sales Tax Information For Manufacturers, Publication 852 (9/86) and thus are subject to the sales tax imposed by Section 1105(a) of the Tax Law.

DATED: March 31, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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