

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

TSB-A-95 (27)S
Sales Tax
July 17, 1995

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S950207B

On February 7, 1995, a Petition for Advisory Opinion was received from Alvy Dental Supply Co., 160 Park Avenue, Nutley, New Jersey 07110.

The issue raised by Petitioner, Alvy Dental Supply, is whether sales by it of tangible personal property to dental laboratories are subject to State or any local sales taxes.

Petitioner, a New York corporation, has its only place of business located outside of New York State. It sells tangible personal property to dental laboratories throughout the State of New York. The dental laboratories use the tangible personal property to manufacture dentures and crowns for resale to dentists. Tangible personal property sold by Petitioner includes items such as teeth, porcelain, certain acrylics and certain metals which become a physical component part of a denture or crown and items such as waxes, abrasives and plaster which do not.

Section 1101(b)(4)(i) of the Tax Law defines a retail sale as "[A] sale of tangible property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible property,...."

Section 526.6(c) of the Sales and Use Tax Regulations defines a sale for resale as follows:

Resale exclusion. (1) 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.

(2) A sale for resale will be recognized only if the vendor receives a properly completed resale certificate....

Section 528.13 of the Sales and Use Tax Regulations provides an exemption from sales tax of certain machinery, equipment and tools and supplies as follows:

(a) Exemption. (1) Exemption from statewide tax. An exemption is allowed from the tax imposed under subdivisions (a) and (c) of section 1105 of the Tax Law, and from the compensating use tax imposed under section 1110 of the Tax Law, for receipts from sales of the following:

* * *

(iii)(a) Parts with a useful life of one year or less, tools or supplies for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale by manufacturing, processing, generating, assembling, refining, mining or extracting. (Emphasis added)

* * *

(2) Exemption from taxes imposed by localities other than New York City.

(i) There is an exemption from all local sales and use taxes, other than the taxes imposed in New York City, for all sales and uses of:

(a) tangible personal property used or consumed directly and predominantly in the production for sale of tangible personal property, gas, electricity, refrigeration or steam by manufacturing, processing, generating, assembling, refining, mining or extracting; and

* * *

(3) Exemptions from New York City local tax. (i) There is an exemption from the sales and use tax imposed in New York City under Section 1107 of the Tax Law for sales and uses of the following:

* * *

(ii) There is no exemption from the sales and use tax imposed in New York City under section 1107 of the Tax Law for sales and uses of:

(a) parts with a useful life of one year or less or tools or supplies used in connection with the exempt machinery, equipment or apparatus described in subparagraph (i) of this paragraph; or (Emphasis added)

Sales by Petitioner to dental laboratories of teeth, porcelain, certain acrylics and certain metals which become a physical component part of a denture for sale by the laboratory may be purchased for resale provided the purchaser thereof gives the seller a properly completed Resale Certificate (Form ST-120) in accordance with the provisions of Section 1101(b)(4)(i) of the Sales Tax Law and sections 526.6(c)(1) and (2) of the Sales and Use Tax Regulations.

Sales of waxes, abrasive, plaster and other supplies that are used to produce tangible personal property for sale by dental laboratories may be purchased without payment of the State sales tax and all local sales taxes other than the New York City sales tax in accordance with the provisions

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of section 528.13 of the Sales and Use Tax Regulations. Laboratories making purchases of such supplies should give the seller a properly completed Exempt Use Certificate (Form ST-121).

DATED: July 17, 1995

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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