

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

TSB-A-99(44)S  
Sales Tax  
November 4, 1999

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S990330A

On March 30, 1999, the Department of Taxation and Finance received a Petition for Advisory Opinion from Capital Mercury Apparel, 1372 Broadway, New York, New York 10018.

The issue raised by Petitioner, Capital Mercury Apparel, is whether certain materials used in its design department are exempt from sales and compensating use tax under Section 1115(a)(10) of the Tax Law.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner manufactures a wide variety of clothing items including shirts, sweaters, suits and leisure wear. Petitioner has a research and development facility in New York State. Petitioner's designers purchase fabric swatches that are used to design and create new products and lines of clothing. These fabric swatches are scanned into a computer. The computers are then used by designers to sketch new designs for product lines, varying such factors as color and texture. In addition, Petitioner's lab purchases color printers, as well as printer cartridges and paper, to produce print-outs of the computer generated designs. If a sample product created from a design is selected for marketing, production will occur at a separate facility.

**Applicable Law and Regulations**

Section 1115(a)(10) of the Tax Law provides exemption from the sales and compensating use tax for:

Tangible personal property purchased for use or consumption directly and predominantly in research and development in the experimental or laboratory sense. Such research and development shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects.

Section 528.11 of the Sales Tax Regulations provides, in part:

(b) *Research and development.* (1) Research and development in the experimental or laboratory sense means research which has as its ultimate goal:

(i) basic research in a scientific or technical field of endeavor;

- (ii) advancing the technology in a scientific or technical field of endeavor;
- (iii) the development of new products;
- (iv) the improvement of existing products;
- (v) the development of new uses for existing products.

(2) Research and development in the experimental or laboratory sense does not include:

(i) testing or inspection of materials or products for quality control (for machinery or equipment used for quality control in the production of products for sale, see section 528.13 of this part);

- (ii) efficiency surveys;
- (iii) management studies;
- (iv) consumer surveys, advertising and promotions; and
- (v) research in connection with literary, historical or similar projects.

(c) *Directly, predominantly, exclusively.* (1) Direct use in research and development means actual use in the research and development operation. Tangible personal property for direct use would broadly include materials worked on, and machinery, equipment and supplies used to perform the actual research and development work. Usage in activities collateral to the actual research and development process is not deemed to be used directly in research and development.

(2) Tangible personal property is used predominantly in research and development if over fifty percent of the time it is used directly in such function.

### **Opinion**

Petitioner's designers purchase fabric swatches used to create designs for new lines of clothing that may subsequently be manufactured. Petitioner also purchases color printers, printer cartridges and paper, which are used to produce hard copies of the designs. Tangible personal property used in this manner, in the preliminary conceptual stage of design, is not considered to be used directly in research and development (see Lenon Sokolowski Models, Dec Tax App Trib,

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May 16, 1991, TSB-D-92(70)S; Sybron Corporation, Adv Op St Tx Comm, May 14, 1985, TSB-A-85(17)S; Procom Devices Inc., Adv Op Comm T&F, December 3, 1987, TSB-A-88(4)S). Accordingly, the swatches, color printers and related supplies purchased by Petitioner do not qualify for exemption under Section 1115(a)(10) of the Tax Law.

DATED: November 4, 1999

/s/  
John W. Bartlett  
Deputy Director  
Technical Services Bureau

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