

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

TSB-H-81(52)S
Sales Tax
April 14, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S801027D

On October 27, 1980 a Petition for Advisory Opinion was received from Trans World Music Corporation, 874 Albany-Shaker Road, Latham, New York 12110.

The issue raised is whether receipts from the sale of certain gummed labels, which are affixed either to the packaging of Petitioner's product or to the product itself, are subject to the sales tax imposed under Article 28 of the Tax Law, when such labels are purchased by Petitioner.

Petitioner, a wholesaler, purchases various gummed labels, some of which are affixed to either the inside or outside of the cartons shipped to its customers, and others of which are affixed to the product to indicate the type of product and the retail selling price of the product. The former includes address labels and labels with the following notations: "Defective," "Hold For Special Sale," "Special Order," and "Re-Bag."

Section 1105(a) of the Tax Law, contained in Article 28 thereof, imposes a tax on the receipts from retail sales of tangible personal property. Section 1115(a)(19) of the Tax Law exempts from such tax "Cartons, 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 1101(b)(4) of the Tax Law excludes from the definition of retail sales the proceeds of which are subject to the sales tax sales of tangible personal property for resale either as such or as a physical component part of tangible personal property.

The Sales and Use Tax Regulations, in defining the term "packaging material," provide that "Packaging material includes, but is not limited to:...boxes...cartons...gummed labels...actually transferred with the product to the purchaser," and provides that "'actually transferred'" means that the packaging material is physically transferred to the purchaser, for whatever disposition the purchaser wishes." 20 NYCRR 528.20(b).

Purchases by Petitioner of the labels which are affixed to either the inside or outside of the cartons shipped to its customer are eligible for the tax exemption contained in section 1115(a)(19) of the Tax Law. The "Our Price" labels which Petitioner purchases and affixes to the product do not constitute packaging. However, they do come within the re-sale exclusion contained in section 1101(b)(4) of the Tax Law, inasmuch as they are re-sold as a "physical component part of tangible personal property." Purchases of such labels are therefore not subject to tax where Petitioner supplied the vendor with a completed resale certificate (Form ST-120).

DATED: February 25, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau

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