

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

TSB-A-81(22)S
Sales Tax
September 10, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810319B

On March 19, 1981 a Petition for Advisory Opinion was received from Colby Engraving and Rubber Plate Corp., 39-44 28th Street, Long Island City, New York 11101.

The issue raised is whether Petitioner's use of certain property utilized in Petitioner's business is subject to the compensating use tax imposed under Article 28 of the Tax Law.

Petitioner produces rubber printing plates in accordance with customer specifications. The design of each plate is copied from camera ready artwork submitted by the customer.

The Tax Law imposes a compensating use tax on the use within New York of tangible personal property purchased by a resident thereof, except to the extent that the property has been or will be subject to the sales tax imposed under Article 28 of the Tax Law. Tax Law, §§1110, 1118(2). An exemption from such tax is provided 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, generating, assembling, refining, mining or extracting, . . . 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." Tax Law, §1115(a)(12). This exemption is applicable to Petitioner's use of graphic arts film, magnesium plate and molding board, which constitute manufacturing equipment.

Section 1105-B(c) of the Tax Law provides for reduced tax rates with respect to the use of parts with a useful life of one year or less, tools and supplies "for use or consumption directly and predominantly in the production of tangible personal property . . . for sale by manufacturing, processing." Such rate reduction is applicable, in the present instance, to Petitioner's use of emory cloth, which constitutes a machine part with a useful life of one year or less, and to the following items, which constitute supplies:

Fixative Developer
Fixative Carbon for Lights
Asco Red Opaque
Carbon for Arc Lamp
Developer
Webril pads
Resistol

Lye
Pumice
Proofing ink & paper
Masking tape
Grinding powder

Section 1105-B provides for a statewide compensating use tax rate of 2% with respect to property first used during the period September 1, 1980 through February 28, 1981, and for a full exemption from statewide tax with respect to such property first used on or after March 1, 1981.

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Petitioner's use of uncured rubber which becomes a physical component part of the rubber plates sold to its customers is exempt from compensating use tax pursuant to section 1118(4) of the Tax Law. That provision exempts ". . . the use of property which is converted into or becomes part of a product produced for sale by the purchaser." Similarly, Petitioner's use of any other items, including those classified as "supplies" above, which become actual detectable physical components of the finished product are also exempt from use tax.

As to Petitioner's use of corrugated paper and kraft wrapping paper which are used to package plates, artwork and proofs for shipment to the proper designation, such use is exempt from tax pursuant to Section 1115(a)(19) of the Tax Law, which exempts the use of "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."

Petitioner's use of invoices for the billing of its customers is subject to the compensating use tax because the invoices constitute tangible personal property not described in any exemption provision of the Tax Law. While they are used in connection with a production process they are not so used "directly, as required by Section 1115(a)(12) of the Tax Law, thus constituting merely administrative supply items.

DATED: August 25, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau