

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

TSB-A-94 (52)S
Sales Tax
December 20, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940720A

On July 20, 1994, a Petition for Advisory Opinion was received from Matt Brewing Co., Inc., 811 Edward Street, Utica, New York.

The issue raised by Petitioner, Matt Brewing Co., Inc., is whether or not its purchase of kegs and pallets which are shipped outside its normal territory are subject to sales tax.

Petitioner's shipments to distributors outside its normal region resulted in pallets and kegs not being returned because the cost to return them was more than a distributor was willing to pay. Consequently, in 1990 Petitioner raised the deposit price of pallets to its cost and in 1994 raised the deposit on kegs going outside its region to replacement cost.

Section 1115(a)(19) of the Tax Law provides that:

(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

(19) 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 528.20 of the Sales and Use Tax Regulations provides in part:

Cartons, containers, and wrapping and packaging materials and supplies. [Tax Law §1115(a)(19)] (a) Exemption.

(1) The sale 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, is exempt from sales and use tax. . . .

(b) Definitions. (1) 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.

(2) The term vendor in this section refers to any person who sells tangible personal property whether manufacturer, wholesaler, retailer, processor or assembler.

(3) The term purchaser in this section refers to any person purchasing tangible personal property from a vendor, whether or not he is the ultimate consumer.

(4) Actually transferred means that the packaging material is physically transferred to the purchaser, for whatever disposition the purchaser wishes.

Example 1: A returnable soda bottle may be returned for a refund of deposit or disposed of otherwise. Such a bottle is actually transferred to the purchaser and may be purchased without payment of tax. . . .

Petitioner's transfer of the kegs and pallets, at a price which reflects their cost, to customers outside its region constitute exempt sales of containers and packaging materials in accordance with the meaning and intent of section 1115(a) (19) of the Tax Law and Sections 528.20(a)(1) and (b) of the Sales and Use Tax Regulations since they were actually transferred to the customers for whatever disposition the customer wishes. (See: Clinton's Ditch Co-op TSB-A-90(38)S)

Accordingly, Petitioner may purchase for resale those kegs and pallets which are actually transferred to its customers for whatever disposition the customer wishes.

DATED: December 20, 1994

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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