

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

TSB-A-95 (23)S  
Sales Tax  
June 28, 1995

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S941031E

On October 31, 1994, a Petition for Advisory Opinion was received from The Design Council Ltd., 462 7th Avenue, New York, New York 10001.

The issue raised by Petitioner, The Design Council Ltd., is whether mechanical drawings used in the textile industry are considered production equipment for purposes of the New York State and local sales and use taxes, and, therefore, exempt from sales tax.

Petitioner is engaged in producing mechanical drawings for its customers, who are predominately garment and textile manufacturers. The mechanical drawings, which are camera ready artwork, are used to produce a silkscreen or other printing process. Using the silkscreen, by a technique of producing an image on a printing surface, the mechanical drawing's image is printed on fabric. Customers also use the mechanical drawings to produce hang tags, wrapping paper and box and bag designs.

Petitioner states that in the textile industry, printing the fabric is the process by which silkscreen, produced from the mechanical drawing, creates the desired effect on the printed material. The mechanical drawing is not incidental or expendable to the creative process. Without the mechanical drawing, the image cannot be printed onto the fabric. When the process started by the active and causal role of the mechanical drawing is complete, tangible personal property is produced.

When purchased, the mechanical drawings are the customer's property and may be reused. The mechanical drawings represent an investment by the customer. If their design is successful, increased production runs will be required. The mechanical drawings permit the customer to begin another production run, increasing the customer's ability to sell products which are tangible personal property in nature.

Section 1115 of the Tax Law provides, in part, as follows:

Sec. 1115. Exemptions from sales and use taxes.--(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:

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(12) Machinery or equipment 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, or telephone central office equipment or station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication, 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. This exemption shall include all pipe, pipeline, drilling rigs, service rigs, vehicles and associated equipment use in the drilling, production and operation of oil, gas, and solution mining activities to the point of sale to the first commercial purchaser.

Section 528.13 of the Sales and Use Tax Regulations provides, in pertinent part, as follows:

Reg. Sec. 528.13. Machinery and equipment used in production; telephone and telegraph equipment; parts, tools and supplies--(Tax Law, Sec. 1115(a)(12)). (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:

(i) Machinery or equipment (including parts with a useful life of more than one year) 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. (This exemption includes all pipe, pipeline, drilling rigs, service rigs, vehicles and associated equipment used in the drilling, production and operation of oil, gas and solution mining activities to the point of sale to the first commercial purchaser.)

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(c) Directly and predominantly. (1) "Directly" means the machinery or equipment must, during the production phase of a process,

- (i) act upon or effect a change in material to form the product to be sold, or
- (ii) have an active casual relationship in the production of the product to be sold, or
- (iii) be used in the handling, storage, or conveyance of materials or the product to be sold, or
- (iv) be used to place the product to be sold in the package in which it will enter the stream of commerce.

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(4) Machinery or equipment is used predominantly in production, if over 50 percent of its use is directly in the production phase of a process.

New York State Department of Taxation and Finance Publication 842 (12/93), New York State and Local Sales Tax Information for Printers, at page 27 states that the purchases by a printing company of "artwork, illustrations, layouts, drawings, paintings, mechanicals, overlays designs, photographs, pasteups, and onionskin" are "equipment" and, therefore, are exempt from State and local sales and use taxes if such equipment is used or consumed directly and predominantly to produce printed material for sale. (emphasis added)

In the instant case Petitioner sells mechanical drawings to customers for their use in preparing a silkscreen necessary for printing the designs on garments produced for sale. Customers may also use the mechanical drawings to produce hang tags, wrapping paper and box and bag designs. Pursuant to Publication 842, supra, the purchases of mechanicals by a printing company are exempt from State and local sales and use taxes if such mechanicals are used or consumed directly and predominantly to produce printed material for sale. Accordingly, provided the mechanicals are used or consumed by Petitioner's customers, who are predominately garment and textile manufacturers and not printing companies per se, directly and predominantly (over 50 percent of its use is directly in the production phase) to produce the printing on tangible personal property produced for sale, such mechanicals would be deemed production equipment pursuant to Section 1115(a)(12) of the Tax Law and Section 528.13 of the Sales and Use Tax Regulations. Therefore, the sale by Petitioner of such mechanicals would be exempt from the sales and use taxes imposed under Articles 28 and 29 of the Tax Law. Therefore Petitioner would not be required to collect sales tax provided it receives a properly completed Exempt Use Certificate from its customers.

DATED: June 28, 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.