

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

TSB-A-97(77)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S970922A

On September 22, 1997, a Petition for Advisory Opinion was received from Dermody Burke & Brown CPA PC, 555 French Road, New Hartford, New York 13413.

The issue raised by Petitioner, Dermody Burke & Brown CPA PC, is whether film and processing supplies used in automatic photo machines are subject to sales and use tax.

Petitioner submits the following facts.

Petitioner's client has several automatic photo machines in its amusement park. Customers enter the photo booths, insert the required fee, and receive photos of themselves. The sales from the photo machines are reported as taxable on Petitioner's client's quarterly return.

Applicable Law and Regulations

Section 1105(a) of the Tax Law imposes a tax on the receipts from retail sales of tangible personal property, except when purchased for resale.

Section 1115(a)(12) of the Tax Law exempts from tax:

Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property... for sale, by manufacturing, processing . . . 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.

Section 1105-B(a) of the Tax Law provides, in part:

. . . receipts from the retail sales of parts with a useful life of one year or less, tools, supplies for use or consumption directly and predominantly in the production of tangible personal property... for sale by manufacturing, processing . . . shall be . . . exempt from such tax on and after March first, nineteen hundred eighty-one.

Section 528.13(c)(4) of the Sales and Use Tax Regulations provides:

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

Opinion

In this case, Petitioner's client develops negatives from its own film and prints photographs. The entire process constitutes the production of tangible personal property for sale. Accordingly, Petitioner's client may purchase the

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film and processing supplies used predominantly in the production of the photographs exempt from sales and use tax, by issuing to its supplier a properly completed exempt use certificate (Form ST-121) within ninety days of the date of purchase.

/s/

DATED: December 4, 1997

JOHN W. BARTLETT
Deputy Director
Technical Services Bureau

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