

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-01(10)S
Sales Tax
April 12, 2001

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S000911A

On September 7, 2000, the Department of Taxation and Finance received a Petition for Advisory Opinion from Roy Hoffmann, CPA, 855 6th Avenue, Suite 501, New York, NY 10001.

The issue raised by Petitioner, Roy Hoffmann, CPA, is whether the sales tax exemption on clothing applies to the sale of fabric described in the following situations:

1. A business that sells yarn, fabric, and thread, sells 5 yards of a \$50.00 per yard fabric to a customer.
2. A business sells 5 yards of a \$50.00 per yard fabric, where the customer will use such fabric to make 8 parts of a multi-fabric item.

Applicable Authority

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(15) Clothing and footwear. (i) Clothing and footwear to be worn by human beings, but not including costumes or rented formal wear, and (ii) fabric, thread, yarn, buttons, snaps, hooks, zippers and like items which are used or consumed to make or repair such clothing (other than such costumes or rented formal wear) and which become a physical component part of such clothing, but not including such items made from pearls, precious or semi-precious stones, jewels or metals, or imitations thereof.

Section 1115 of the Tax Law provides, in part:

(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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* * *

(30) Clothing and footwear for which the receipt or consideration given or contracted to be given is less than one hundred ten dollars per article of clothing, per pair of shoes or other articles of footwear or per item used or consumed to make or repair such clothing and which becomes a physical component part of such clothing.

Technical Services Division Memorandum entitled Sales and Use Tax Exemption on Clothing, Footwear, and Items Used to Make or Repair Exempt Clothing, January 24, 2000, TSB-M-0(1)S announced an amendment to the Tax Law with respect to the imposition of sales tax on clothing, footwear and other items used or consumed to make or repair such clothing. TSB-M-00(1)S provides, in part:

Beginning March 1, 2000, clothing and footwear costing less than \$110 per item is exempt from the 4% New York State sales and compensating use taxes. This exemption does not apply to any locally imposed sales and use taxes unless the county or city imposing those taxes elects to provide for it. . . .

The exemption applies only to clothing and footwear worn by humans. It also applies to most fabric, thread, yarn, buttons, snaps, hooks, zippers, and like items which become a physical component part of exempt clothing used to make or repair exempt clothing. . . .

* * *

The article of clothing or footwear (per pair) must be sold for less than \$110. This "less than \$110" limitation also applies to each item of fabric, thread, yarn, buttons, snaps, hooks, zippers and like items which become a physical component part of exempt clothing or are used to make or repair the exempt clothing. . . . (emphasis added)

Opinion

Pursuant to Section 1101(b)(15) of the Tax Law the term "clothing and footwear" includes fabric, thread, yarn, buttons, snaps, hooks, zippers and like items which are used or consumed to make or repair such clothing and which become a physical component part of such clothing. In accordance with Section 1115(a)(30) of the Tax Law and TSB-M-00(1)S, supra, the exemption for clothing, footwear and other items used or consumed to make or repair such clothing costing less than \$110 applies on a per item basis. Therefore, regardless of whether the cost per yard of fabric is less than \$110 or the fabric purchased will be one part of an eight-part multi-fabric item, the fabric purchased will be subject to sales and compensating use taxes if the total cost for the amount

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of fabric purchased as a single item is \$110 or more. Accordingly, where a customer purchases 5 yards of a fabric as a single item at \$50 per yard, the total cost will be more than \$110. Therefore, the purchases described in the above questions will be subject to sales and compensating use taxes and the exemption under Section 1115(a)(30) of the Tax Law will not apply.

DATED: April 12, 2001

/s/
Jonathan Pessen
Tax Regulation Specialist III
Technical Services Division

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