

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division

TSB-A-08(8)S
Sales Tax
February 14, 2008

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S061228B

On December 28, 2006, the Department of Taxation and Finance received a Petition for Advisory Opinion from Scott Hinman, Syracuse Clean Gear, 8762 Lovere Trail, Cicero, New York 13039. Petitioner, Scott Hinman, provided additional information pertaining to the Petition on March 19, 2007.

The issue raised by Petitioner is whether Petitioner is required to collect sales tax on receipts from the services described below.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner operates a business that cleans and dries various items, including but not limited to horse blankets, fire turnout gear, hockey pads, hockey gloves, hockey pants, sport helmets, skates, and football pads. These items are either cloth, vinyl fabric, leather, or rubber (e.g., horse blankets, certain fire turnout gear, hockey gloves) or are constructed with a fabric liner and foam padding with an outer hard shell (e.g., hockey pads, sport helmets, skates, football pads). During use, the fabric and padded portions of these various items may become contaminated with sweat, blood, or other contaminants and may then become breeding grounds for bacteria, mold, and fungus.

Petitioner washes these items in an industrial-type washing machine in water mixed with special chemical detergents specifically designed to clean the fabric and padded portions of these items. The washing machine consists of a cylindrical drum similar to a conventional front loading washing machine; however, the drum is divided into triangularly shaped compartments (similar to pieces of a pie) that are accessed separately by a door on the front of the machine. This allows the items being cleaned to be placed in mesh bags and inserted tightly into the compartments, preventing the items from being damaged during the machine's cycles and keeping them separate from other items being cleaned. Once the machine is loaded, the drum rotates, exposing the compartments and their contents to the detergent-water mixture. The items go through wash, spin, rinse, and dry cycles, the total of which takes 2 to 2 and one-half hours. Such washing is performed primarily to clean, disinfect, sanitize, and deodorize either the items themselves or the fabric, liners, and padded portions of the items.

Applicable law and regulations

Section 1105 of the Tax Law provides, in part:

On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax . . . upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

* * *

(c) The receipts from every sale, except for resale, of the following services:

* * *

(3) Installing tangible personal property, excluding a mobile home, or maintaining, servicing or repairing tangible personal property, including a mobile home, not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith, except:

* * *

(ii) any receipts from laundering, dry-cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining;

Section 527.5 of the Sales and Use Tax Regulations provides, in part:

(a) Imposition. (1) The tax is imposed on receipts from every sale of the services of installing, maintaining, servicing or repairing tangible personal property, by any means including coin-operated machines, whether or not any tangible personal property is transferred in conjunction with the services.

* * *

(3) Maintaining, servicing and repairing are terms used to cover all activities that relate to keeping tangible personal property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition.

* * *

Example 5: The charge for washing an automobile is taxable, whether the washing is performed manually or by a coin-operated machine.

* * *

(b) Exemptions.

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(3) Tax is not imposed on the services of laundering, dry-cleaning, tailoring, weaving, pressing, shoe repairing, and shoe shining. For example, alterations to clothing, although considered to be maintaining, servicing, or repairing property, are excluded from tax because they are tailoring. This would include tailoring performed either by an independent tailor or seamstress, or by a tailor or seamstress employed by the vendor of the clothing so long as the vendor's charge for the tailoring is reasonable and separately stated from the charge for the clothing itself, and regardless of whether the clothing qualifies for the exemption from tax under section 1115(a)(30) of the Tax Law. However, when a person provides raw materials to a tailor or seamstress and the tailor or seamstress produces an article of clothing for the person, the tailor's or seamstress' work constitutes the production of clothing (which is not tailoring); and the charge for such service would be subject to State and local sales and use tax. . . .

Opinion

Section 1105(c)(3) of the Tax Law imposes sales tax on receipts from the services of installing, maintaining, servicing or repairing tangible personal property. The exclusion from such tax for laundering and dry-cleaning set forth in section 1105(c)(3)(ii) of the Tax Law and section 527.5(b)(3) of the Regulations applies not only to services performed on apparel but also to the cleaning of bed linens, kitchen linens, rugs, drapes, and upholstery, whether the upholstery is cloth, vinyl fabric, or leather. See *Matter of Rando Enterprises*, Decision of the St Tax Comm, Dec. 23, 1971, STM 72-20; *Linen Systems for Hospitals, Inc.*, Adv Op St Tx Comm, September 25, 1981, TSB-A-81(14)S; *Broome Steam Carpet Cleaning Inc.*, Adv Op Comm T & F, November 16, 1987, TSB-A-87(42)S; *Donald Schapiro*, Adv Op Comm T & F, March 1, 1994, TSB-A-94(8)S.

Petitioner's business cleans and dries various items, including, but not limited to, horse blankets, fire turnout gear, hockey pads, hockey gloves, hockey pants, sport helmets, skates, and football pads. The items cleaned are cloth, vinyl fabric, leather, and rubber, and are sometimes constructed with fabric liners and foam padding that may be connected to a hard outer shell. Petitioner washes these items in an industrial-type washing machine in water mixed with special chemical detergents designed to clean the fabric and padded portions of these various items.

Petitioner's service is to clean, disinfect, sanitize, and deodorize the fabric, rubber, and leather items or the fabric, liners, and padding of items. The cleaning of certain of the items described by Petitioner (horse blankets, fire turnout gear, hockey pants) is clearly laundering as contemplated in section 1105(c)(3)(ii) of the Tax Law. If the fabric, liners, and padding of the other items cleaned by Petitioner were removable from the helmets, skates, shin guards, shoulder pads, etc., without damage to the items in the process and were separately laundered, the receipts from such laundering services would be excluded from the sales tax pursuant to section 1105(c)(3)(ii). Any cleaning effect that Petitioner's services have on the non-fabric or non-padded portions of such items is incidental and is not the reason that Petitioner's services are used by its customers.

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Petitioner cleans, disinfects, sanitizes, and deodorizes fabric, leather and rubber items or the fabric, liners, and padding of items. These services constitute a laundering service as contemplated in section 1105(c)(3)(ii) of the Tax Law. Accordingly, receipts from the sale of such services are not subject to sales tax.

DATED: February 14, 2008

/s/
Jonathan Pessen
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Taxpayer Guidance Division

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.