

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether its monthly subscription fees for its various clothing rental plans are exempt from sales tax pursuant to Tax Law § 1115(a)(30). We conclude that the subscription plans described in the petition are exempt from the State sales tax and from the local sales tax to the extent that the garments are delivered to a customer in a locality that has elected to adopt the clothing exemption.

Facts

Petitioner operates a clothing rental business. Rental subscriptions are set up on a monthly basis, with the monthly charge based on the number of garments a customer can have in his or her possession at a time. There are rental plans for 1, 2, 3, 5, 7 and 10 garments at a time. The monthly subscription fees for the plans are as follows: one garment at a time for \$35; two garments at a time for \$59; three garments at a time for \$79; five garments at a time for \$99; seven garments at a time for \$129; and ten garments at \$159. The monthly subscription fee includes garment rental, cleaning costs, shipping to the customer, and return shipping. The monthly subscription allows unlimited returns and exchanges, and the majority of customers exchange their garments at least once per monthly billing cycle. Exchanges are permitted to take place on a per-garment basis (i.e., customers can mail back garments one at a time as they wear them).

Petitioner offers a wide range of styles, including casual shirts, jersey cardigans, cotton sundresses, office-appropriate pencil skirts, and cocktail-ready shift dresses. Petitioner does not offer accessories (e.g., handbags), or “formal wear” such as tuxedos, ball gowns, and prom dresses. All rental plans give subscribers access to the same catalog of clothing.

Analysis

Tax Law § 1105(a) imposes sales tax on the “receipts from every retail sale of tangible personal property, except as otherwise provided in this article.” “Rental” is included within the definition of “retail sale.” *See* Tax Law § 1101(b)(5). Tax Law § 1115(a)(30) exempts from State sales tax clothing, footwear and items used to make or repair exempt clothing that are sold for less than \$110 per item or pair of shoes. *See* Publication 718-C. The term “clothing and footwear” is defined as “[c]lothing and footwear to be worn by humans beings, but not to include costumes or rented formal wear... .” *See* Tax Law § 1101(b)(15). Localities may choose to exempt clothing from their locally-enacted sales tax. *See* Tax Law § 1210(a)(1),(4).

Petitioner does not rent formal clothing or costumes, so the only issue is how to apply the exemption's monetary threshold of \$110 per article of clothing to Petitioner's subscription plans. The subscription plans with a monthly subscription charge under \$110 per month are exempt because the subscription amount is under the exemption threshold. The subscription plans with a monthly subscription charge over \$110 (*i.e.*, the 7 or 10 garment plans) also are exempt because the price to rent a single garment- \$35- is under the exemption threshold. *See* TSB-A-14(9)S ("a bundle of clothing sold for more than \$110 qualifies for the clothing exemption when the components of such bundle are sold individually for less than \$110."). Moreover, the average fee per garment for the 7 and 10 garment plans, respectively \$18.43 and \$15.90 when the customer has the maximum number of garments outstanding, is less than the per garment cost of subscribing to the 1 garment plan. Therefore, the clothing exemption applies to all of Petitioner's subscription plans. Petitioner is not required to collect State sales tax on its subscriptions, but must collect the local sales tax when garments are delivered to a customer in a locality that has not elected to adopt the clothing exemption. *See* Tax Law § 1101(b)(15); 20 NYCRR 525.2(a)(3); *see also* Publication 718-C.

DATED: June 30, 2020

/S/

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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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.