

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from

Petitioner asks whether the glue purchased by a contractor to bond ceramic tile to the floor in a building owned by the Port Authority is subject to sales or compensating use tax.

We conclude that the glue may be purchased without the payment of sales or use tax when it will be incorporated as an integral component part of real property owned by a governmental entity.

Facts

Petitioner is a construction company that has a contract to install ceramic tile at a terminal in John F. Kennedy International Airport (JFK). In its facts, Petitioner states that the terminal is owned by the Port Authority of New York and New Jersey (Port Authority) and leased to a for-profit entity (“the tenant”) that is contracting with Petitioner to replace ceramic tile in the terminal. Petitioner must purchase glue that it will use to bond the ceramic tile to the floor.

Analysis

When a contractor makes improvements or repairs to real property owned by an organization or governmental entity exempt from tax under Tax Law § 1116(a), materials purchased by the contractor that become an integral component part of such real property are exempt from sales and use tax. *See* Tax Law §§ 1115(a)(15), (16); 20 NYCRR 528.16(a)(2), 528.17, 541.1(e), 541.3(d)(2)(i). In contrast, a contractor’s purchases of the supplies, tools, and equipment it uses in performing the installation that do not become part of the exempt entity’s real property are subject to tax. *See* 20 NYCRR 541.3(d)(2)(iv).

The Port Authority is a governmental entity exempt from sales tax. *See* Tax Law § 1116(a)(1); 20 NYCRR 529.2(a), (b). The glue in question will be integrated into the Port Authority’s property because it will be used to bond ceramic tiles to the floor. Since the glue will become an integral component part of a building owned by a governmental entity, it may be purchased by Petitioner without the payment of sales or use tax. *See* Tax Law §§ 1115(a)(15), (16); *see also*, TSB-A-08(35)S; TSB-A-00(34)S.

To purchase the glue exempt from sales tax, Petitioner should furnish its supplier with a properly completed Form ST-120.1, *Contractor Exempt Purchase Certificate*. See Tax Law § 1132(c)(1). The tenant should also furnish Petitioner with a copy of the lease between the tenant and the Port Authority. Petitioner and the tenant should maintain a copy of the lease in their records as substantiation of the exempt nature of the transaction. See TSB-A-07(4)S.

DATED: June 9, 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.

