

Blasting Agents and Explosives Used in Production

The following is the policy of the Department of Taxation and Finance with respect to blasting agents and explosives used in production.

In accordance with section 1115(c) of the Tax Law and section 528.22(b) of the Regulations, blasting agents and explosives are considered 'fuel' and therefore exempt from sales and use taxes when used directly and exclusively to produce tangible personal property for sale.

Section 1115(c) provides an exemption from sales and use taxes for "Fuel ... of whatever nature for use or consumption directly and exclusively in the production of tangible personal property... for sale, by ... mining. . . ."

Regulation section 528.22(b)(1) states, "The term 'fuel' as used in this section means any commodity which produces heat or energy"

The statute exempting fuel from sales and use taxes does not attempt to limit the exemption to any specific type of fuel. Therefore, when blasting agents and detonating explosives are used to produce energy for use directly and exclusively in the production of tangible personal property for sale, they are considered exempt from State and local sales and use taxes (Articles 28 and 29 of the Tax Law), except for taxes imposed in New York City under section 1107(b).

This policy is a result of the Appellate Division decision in the Matter of International Salt Company v. New York State Tax Commission, where the court determined that the blasting agents and detonating explosives used by International Salt Company in extracting salt at its mine did qualify for exemption from sales and use taxes under section 1115(c) of the Tax Law.