

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

TSB-A-02(17)S
Sales Tax
June 26, 2002

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S000907A

On September 7, 2000, the Department of Taxation and Finance received a Petition for Advisory Opinion from Henry & Henry Inc., 3765 Walden Avenue, Lancaster, New York 14086-1494.

The issues raised by Petitioner are:

- (1) Whether the equipment used in the unloading of raw materials at Petitioner's plant site qualifies for the manufacturing exemption as equipment used in the production process.
- (2) Whether the racking used exclusively to store raw materials in a raw material warehouse at the plant site qualifies for the manufacturing exemption as equipment used in the production process.

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

Petitioner is a manufacturer producing a number of bakery ingredients, soda fountain toppings and syrups, which are sold primarily to distributors.

Raw materials are received by Petitioner at two dedicated docks at the production facility. The materials are visually checked for damage and a package count is verified before the shipping documents are signed and the driver released. The materials are not subjected to further checking, testing, weighing or measurement at this point in time.

Petitioner's personnel then use fork trucks to move the raw materials to the appropriate location. This may be the production area if there is an immediate need. However, the more common practice would be to store the materials for a short period of time on steel racking located in the raw material warehouse until the production department requisitions them. The raw materials are placed on the steel racks which are capable of holding either cartons or pallets of cartons. The racking is bolted to the concrete floor of the raw material warehouse to prevent the racking from moving when raw materials are loaded onto it. Once the production department requisitions raw materials, personnel would relocate the raw materials from the steel racks in the raw material warehouse to the production area for processing.

Applicable Law and Regulations

Section 1105 of the Tax Law provides, in part:

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

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

Section 1115(a) of the Tax Law provides, in part:

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:

* * *

(12) Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting

Section 528.13 of the Sales and Use Tax Regulations provides, in part:

Machinery and equipment used in production; telephone and telegraph equipment; parts, tools and supplies. [Tax Law, §1115(a)(12)]

(a) *Exemption.* (1) Exemption from statewide tax. An exemption is allowed from the tax imposed under subdivisions (a) and (c) of section 1105 of the Tax Law, and from the compensating use tax imposed under section 1110 of the Tax Law, for receipts from sales of the following:

(i) Machinery or equipment (including parts with a useful life of more than one year) used or consumed directly and predominantly in the production for sale of tangible personal property, gas, electricity, refrigeration or steam, by manufacturing, processing, generating, assembling, refining, mining or extracting

* * *

(b) *Production.* (1) The activities listed in paragraph (a)(1) of this section are classified as administration, production or distribution.

(i) *Administration* includes activities such as sales promotion, general office work, credit and collection, purchasing, maintenance, transporting, receiving and

testing of raw materials and clerical work in production such as preparation of work, production and time records.

(ii) *Production* includes the production line of the plant starting with the handling and storage of raw materials at the plant site and continuing through the last step of production where the product is finished and packaged for sale.

(iii) *Distribution* includes all operations subsequent to production, such as storing, displaying, selling, loading and shipping finished products.

(2) The exemption applies only to machinery and equipment used directly and predominantly in the production phase. Machinery and equipment partly used in the administration and distribution phases does not qualify for the exemption, unless it is used directly and predominantly in the production phase.

(3) The determination of when production begins is dependent upon the procedure used in a plant. If on receiving raw materials, the purchaser weighs, inspects, measures or tests the material prior to placement into storage, production begins with placement into storage, and the prior activities are administrative. If the materials are unloaded and placed in storage for production without such activities, the unloading is the beginning of production. (Emphasis added)

Example 1: A crane is used to unload raw materials, which are immediately placed in storage at a plant. From the storage site, the material is placed on an assembly line without testing. The crane is being used in production.

* * *

(c) Directly and predominantly. (1) Directly means the machinery or equipment must, during the production phase of a process:

(i) act upon or effect a change in material to form the product to be sold, or

(ii) have an active causal relationship in the production of the product to be sold, or

(iii) be used in the handling, storage, or conveyance of materials or the product to be sold, or

(iv) be used to place the product to be sold in the package in which it will enter the stream of commerce.

(2) Usage in activities collateral to the actual production process is not deemed to be used directly in production.

* * *

(4) Machinery or equipment is used predominantly in production, if over 50 percent of its use is directly in the production phase of a process.

* * *

Example 11: A fork lift is used 60 percent of the time on an assembly line and 40 percent of the time for loading finished products onto railroad cars for delivery. The fork lift is used predominantly in production.

Opinion

Petitioner states that raw materials are received at two dedicated docks at the production facility. The materials are visually checked for damage and the package count is verified before the shipping documents are signed and the driver making the delivery is released. The materials are then moved to storage prior to being moved to the production area, or directly to the production area if there is an immediate need. Section 528.13(b)(3) of the Sales and Use Tax Regulations provides that, “If on receiving raw materials, the purchaser weighs, inspects, measures or tests the material prior to placement into storage, production begins with placement into storage, and the prior activities are administrative.” (Emphasis added.) The activities of weighing, measuring and testing of raw materials clearly require that the raw materials be subjected to activities that require the actual handling of the raw materials and the use of external devices such as scales, rulers, meters and other administrative equipment. In this context, the term “inspects” also implies the handling of the raw materials in some inspection process and the use of some administrative equipment to determine the suitability of the raw materials for use in the production process.

Issue 1

The acts of visually checking and verifying package counts do not ascend to the level of handling required by Section 528.13(b)(3) of the Sales and Use Tax Regulations to make the unloading of raw materials an administrative activity. Accordingly, Petitioner’s use of equipment in unloading raw materials at its plant is considered to be a use directly in production as described in Section 1115(a)(12) of the Tax Law and Sections 528.13(b)(1)(ii) and 528.13(b)(3) of the Sales and Use Tax Regulations. If the fork trucks and other equipment are used predominantly (more than 50% of use) to unload raw materials as described above, or to move materials to storage or other areas of the production process, such equipment may be purchased exempt from tax as production equipment.

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Issue 2

Since production begins with the unloading of raw materials at Petitioner's plant site, racking used to store the raw materials subsequent to the unloading process is considered to be used directly in production. If such racking is used predominantly to store raw materials, or materials that are in the production process, the racking may be purchased tax exempt as production equipment.

It should be noted that an Exempt Use Certificate (Form ST-121) should be furnished to the supplier in order to purchase the fork trucks, racking and other equipment exempt from tax. A properly completed certificate should be furnished to the vendor within ninety days of the date of sale. See Section 1132(c) of the Tax Law and Section 532.4 of the Sales and Use Tax Regulations.

DATED: June 26, 2002

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Technical Services Division

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