

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

TSB-A-03(22)S
Sales Tax
May 8, 2003

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S020904A

On September 4, 2002, the Department of Taxation and Finance received a Petition for Advisory Opinion from Cornwell Energy Management, Inc., 36 Summit St., Huntington, NY 11743. Petitioner, Cornwell Energy Management, Inc., provided additional information pertaining to the Petition on September 18, 2002.

The issue raised by Petitioner is whether its sales and installations of motor controllers onto exempt production machinery are exempt from State and local sales and use taxes.

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

Petitioner sells and installs “intelligent” motor controllers that increase the efficiency, reliability, and useful life of certain electric motors. Such motor controllers, sold under the brand name “Motorboss,” continually measure the shaft torque of electric motors, and deliver precisely the amount of power needed to drive the motor’s load at any given instant. Installation of Motorboss often results in energy savings of 15% - 40%. As a consequence of consuming less power, motors run cooler, with less vibration, and with reduced stress on motor windings and drive train components. In addition to the considerable savings in energy costs, Motorboss increases the useful life of electric motors and reduces both scheduled and unscheduled maintenance costs. In this regard it is noted that for every 10°C increase in operating temperature, a motor’s useful life is reduced by half.

Motorboss is often installed on the electric motors of machinery used in the direct process of manufacturing tangible property for sale (i.e., that are exempt from the imposition of sales tax under Section 1115(a)(12) of the Tax Law), such as the primary drive motor on a plastic injection molding machine used to manufacture molded plastic goods for sale. Installation of Motorboss entails permanent wiring of the device directly to the motor (like a switch would be, between the power source and the motor) and bolting it to either the appliance itself or to its electric control cabinet. Motorboss has no moving parts (all solid-state electronics), requires little or no maintenance, and has an expected life of at least 15 years.

While warranty repairs generally involve only replacement of the printed circuit board, Motorboss could be unwired and unbolted in order to be returned to Petitioner for repair.

As part of its Petition, Petitioner also submitted its sales brochure for review. Petitioner’s brochure indicates that Motorboss is suitable for a wide variety of applications, such as automatic doors, fans, and escalators.

Applicable Law and Regulations

Section 1101(b)(9)(i) of the Tax Law defines the term “capital improvement” to mean:

An addition or alteration to real property which:

(A) Substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; and

(B) Becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and

(C) Is intended to become a permanent installation.

Section 1105(a) of the Tax Law imposes sales tax on the receipts from every retail sale of tangible personal property, except as otherwise provided.

Section 1105(c) of the Tax Law imposes a tax on 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:

* * *

(iii) for installing property which, when installed, will constitute an addition or capital improvement to real property, property or land, as the terms real property, property or land are defined in the real property tax law as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter. . . .

* * *

(5) Maintaining, servicing or repairing real property, property or land, as such terms are defined in the real property tax law, whether the services are performed in

or outside of a building, as distinguished from adding to or improving such real property, property or land, by a capital improvement as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this article. . . .

Section 1105-B of the Tax Law provides, in part:

(a) Receipts from the retail sales of parts with a useful life of one year or less, tools and supplies for use or consumption directly and predominantly in the production of tangible personal property . . . for sale by manufacturing, processing, generating, assembling, refining, mining or extracting shall be exempt from the tax imposed by subdivision (a) of section eleven hundred five of this article.

(b) Receipts from every sale of the services of installing, repairing, maintaining or servicing the tangible personal property described in paragraph twelve of subdivision (a) of section eleven hundred fifteen of this article, including the parts with a useful life of one year or less, tools and supplies described in subdivision (a) of this section, to the extent subject to such tax, shall be exempt from the tax on sales imposed under subdivision (c) of section eleven hundred five of 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 . . . for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery or equipment. . . .

Opinion

Petitioner sells and installs motor controllers. These motor controllers are often installed onto production machinery that qualifies for exemption from sales tax under Section 1115(a)(12) of the Tax Law.

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All electrical parts actually attached to a qualifying piece of production machinery or equipment are deemed to assume the identity of such machinery and equipment and are therefore entitled to the same exemption as the machinery and equipment that is contained in Section 1115(a)(12) of the Tax Law. All other electrical components used prior to the power source are not used directly in production. See New York State Department of Taxation and Finance Publication 852 (12/97), New York State and Local Sales Tax Information for Manufacturers, Processors, Generators, Assemblers, Refiners, Miners and Extractors, Other Producers of Goods and Merchandise, page 17.

In Western New York Beverage Industry Collection & Sorting, Adv Op Comm T&F, July 23, 1997, TSB-A-97(40)S, it was determined that an electrical transformer used to convert standard electrical service to amperage compatible with the operating specifications of recycling production equipment was an integral part of such equipment entitled to the same exemption afforded the equipment. In Leprino Foods Company, Adv Op Comm T&F, April 28, 1994, TSB-A-94(17)S, motor starters and frequency inverters directly wired to specific pieces of production machinery and equipment to regulate their voltage and speed were found to assume the identity of the individual pieces of machinery and equipment and were entitled to the same exemption. Petitioner's motor controllers are akin to the transformers, motor starters, and frequency inverters that are the subjects of those advisory opinions. The motor controllers are designed to provide optimum motor efficiency for specific pieces of exempt production machinery and are directly wired, after the power source, to such machinery. Thus, Petitioner's motor controllers are considered to assume the identity of the production equipment they are attached to and are entitled to the same exemption under Section 1115(a)(12) of the Tax Law (see Western New York Beverage Industry Collection & Sorting, *supra*; and Leprino Foods Company, *supra*).

Petitioner's services of installing the motor controllers onto exempt production machinery are also exempt from New York State and local sales taxes in accordance with Section 1105-B(b) of the Tax Law. Accordingly, Petitioner's sales and installations of motor controllers onto exempt production machinery and equipment are exempt from the imposition of sales and use tax and Petitioner should obtain, within 90 days of the date of a sale, a properly completed Form ST-121, *Exempt Use Certificate*, from its customer to substantiate that the transaction is not subject to tax. See Section 1132(c) of the Tax Law.

Petitioner's sales brochure indicates that the motor controllers are suitable for a wide variety of applications, some of which may not qualify for the production exemption, such as automatic doors, fans, and escalators. Therefore, it is necessary to address whether the motor controllers as installed constitute capital improvements.

The motor controllers as described by Petitioner and its sales brochure do not constitute capital improvements because they fail to satisfy the second prong of the statutory test contained in Section 1101(b)(9)(i) of the Tax Law; i.e., they are not affixed in such a way that their removal would cause material damage to the motor controllers themselves or to the real property to which

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they are affixed. Unlike the transformers which constituted capital improvements in Western New York Beverage Industry Collection & Sorting, supra, that are welded to a structural steel frame running the length of the equipment and embedded in concrete, the motor controllers are bolted to the real property and wired to its motor. They require only unwiring and unbolting to be removed for service or repair. Such bolting and wiring does not create the degree of permanence necessary to establish a capital improvement. See Matter of Charles R. Wood Enterprises, Inc. v. State Tax Commn., 67 AD2d 1042; Matter of West Mountain Corp. v. Miner, 85 Misc2d 416; Multi-Pak Sales Corporation, Adv Op Comm T&F, December 11, 1989, TSB-A-89(48)S. Moreover, structures which can be removed without material damage and transported as an entity lack the degree of permanence necessary to establish that a particular installation is a capital improvement. See Hudson River Estates, Inc., Adv Op St Tx Comm, April 5, 1985, TSB-A-85(2)S. Accordingly, the motor controllers do not qualify as capital improvements and their sales and installations are subject to sales and compensating use tax under Sections 1105(a) and 1105(c)(3) of the Tax Law unless they qualify for a specific exemption as previously discussed.

DATED: May 8, 2003

/s/

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