

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-82(28)S
Sales Tax
August 19, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S811008A

On October 8, 1981 a Petition for Advisory Opinion was received from Godfroy's Service Station, Inc., Box 92, Lebanon Springs, New York 12114.

The issue raised is whether the purchase of a machine used to manufacture tail pipes is subject to sales tax. Petitioner describes the machine in question as follows: "The machine is electrical . . . [and] stands on the floor. It is approximately 60" long, 30" wide and 42" high. It consists of hydraulic rams, shoes and dies. The function of this machine is [to] hold, measure and bend straight pipe into a specific length and shape to be used as exhaust tailpipe on each type of vehicle. Each pipe must be made to fit each type of vehicle." The predominant use of the machine is to produce tailpipes used in installations by Petitioner.

Section 1105(a) of the Tax Law imposes a tax on the receipts from retail sales of tangible personal property. However, section 1115(a)(12) of the Tax Law provides an exemption from such sales tax with respect to the purchase of "machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property . . . for sale, by manufacturing, processing" A similar exemption applies with respect to local sales taxes, which are imposed under the authority of Article 29 of the Tax Law, but not with respect to New York City's sales tax, which is imposed under section 1107 of the Tax Law.

Assuming arguendo that the operations performed by the machine in question constitute the "production of tangible personal property," within the meaning and intent of the statutory provision quoted above, the exemption is nonetheless inapplicable in the present instance because the predominant use of the machine is not production "for sale". This conclusion derives from the following considerations.

Section 1101(b)(4)(i) of the Tax Law defines the term "retail sales" to include all sales other than sales of property (A) for resale or (B) for use by the purchaser "in performing the services subject to tax under paragraphs (1), (2), (3) and (5) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax."

The service of installing a tailpipe in a car is one of the taxable services referred to in the foregoing, included within the category of "maintaining, servicing or repairing tangible personal property." Tax Law, §1105(c)(3). Thus, when Petitioner purchases pipes from which the tailpipes are to be produced, the sale of such pipes to him is not subject to tax as a retail sale not because such

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sale is a sale for resale, excluded under section 1101(b)(4)(i)(A), but because it is a sale of property to be transferred in conjunction with a taxable service, excluded under section 1101(b)(4)(i)(B). The statute thus treats (1) sales of property and (2) transfers of property in conjunction with the performance of a taxable service as distinct categories. It is clear, thus, that within the contemplation of the Tax Law, where an automobile is "serviced, maintained or repaired" by having its tailpipe replaced, the entire charge therefor, including that portion representing the value of the tailpipe, is a charge for the rendition of the service and not for the sale of goods. It follows that the tailpipes are not "sold" by Petitioner to its customers and, therefore, that the machine in question is not used predominantly in the production of tangible personal property "for sale," within the meaning and intent of the exemption provision here under discussion. It follows that tax was due on the receipts from Petitioner's purchase of the machine.

DATED: August 3, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau