

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

TSB-A-83(41)S
Sales Tax
October 27, 1983

STATE OF NEW YORK
STATE TAX DEPARTMENT

ADVISORY OPINION

PETITION NO. S830202A

On February 2, 1983 a Petition for Advisory Opinion was received from J.C. Trahan Drilling Contractor, Inc., P.O. Box 2, Ellington, New York 14732.

This petition raises three issues:

1. Whether the purchase of four wheel drive vehicles used in the preparation of locations prior to drilling gas wells, and which contain surveying and staking equipment, is subject to sales tax.

2. Whether the purchase of pick-up trucks which contain equipment essential to the production of gas wells is subject to sales tax. Petitioner describes the equipment included as follows:

"Headache" racks for hauling pipe and equipment to well locations and to the shop for repairs, large tool boxes for equipment used in testing wells and supplies (valves, pipe connections, etc.) for repair and maintenance of wells, fire extinguishers and safety equipment.

3. Whether a copy machine purchased in July, 1982 by Petitioner's Louisiana office, and subsequently transferred to Petitioner's New York office in January, 1983, is subject to use tax. Petitioner was a resident of New York in July, 1982.

These issues arise within the context of an audit concerning the period February 2, 1980 to November 30, 1982.

Section 1115(a)(12) of the Tax Law provides for an exemption from sales tax with respect to sales of machinery and equipment purchased for use "directly and predominantly "in the production of gas, among other things, for sale. The terms "directly and predominantly" are defined in the Sales and Use Tax Regulations, in relevant part, as follows:

- (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 casual 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.

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- (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% of its use is directly in the production phase of a process.

While the vehicles in question are indubitably used in connection with the production of gas, and may even be considered essential thereto, their causal role in the process of gas production is not sufficiently proximate to the production itself to render their use "direct", within the meaning of the portion of section 1115(a)(12) of the Tax Law quoted above. Cole Sand and Gravel Corp., State Tax Commission, January 10, 1983, TSB-H-83(44)S; Rochester Independent Packer, Inc. v. Heckelman, 83 Misc. 2d 1064. Their purchase, accordingly, does not come within the ambit of such exemption as it existed at the commencement of the Audit period in question. However, section 1115(a)(12) was amended subsequently thereto, so as to exempt "vehicles . . . used in the . . . production . . . of gas" L.1981,c.846. Such amendment took effect on August 26, 1981. Accordingly, any purchases or uses by Petitioner of vehicles of the type described above, on or after August 26, 1981, were not subject to tax.

The copy machine at issue was purchased in Louisiana and subsequently moved to and used in New York. Section 1110 of the Tax Law imposes a compensating use tax on the use within New York of tangible personal property purchased by a resident of New York at retail and on which New York sales tax was not paid. Such being the case in the matter at hand, use tax is due on Petitioner's use of the machine within New York. Such tax is generally computed on the basis of the purchase price of the property whose use is subject to tax. However, where a taxpayer demonstrates that the property was used outside New York for more than six months prior to its use within New York, the use of the property is taxed on the basis of current market value at the time of its first use within New York. Tax Law, §1111. In addition, Petitioner would be entitled to an exemption from use tax to the extent that retail sales or use taxes were paid on the purchase in Louisiana. Tax Law, §1118(7)(a).

DATED: September 26, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau