

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

TSB-A-85(18)S
Sales Tax
June 12, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S840206A

On February 6, 1984 a Petition for Advisory Opinion from Syracuse China Corporation, P.O. Box 4820, Syracuse, New York 13221 was received.

The issue raised is whether the Petitioner's acquisitions of a Markman Energy Management System, a Datacom System, and a Rapistan Conveyor System, constitute purchases of machinery and equipment for use or consumption directly and predominantly in the production of tangible personal property for sale by manufacturing and, therefore, qualify for the exemption from sales tax pursuant to section 1115(a)(12) of the Tax Law.

Petitioner submits the following descriptions of the function of each of the aforementioned systems:

The Markman Energy Management (MEM) System is connected to all major electrically powered equipment in the plant area. Its purpose is to monitor the flow of electricity to production machinery, lighting, ventilation and heating for the purpose of achieving the most economical use of energy. Petitioner explains that the system is instrumental in turning equipment on and off "not only as a function of efficient utilization of electrical energy but also to initiate the production process". Petitioner contends this activity constitutes direct and predominant use of the MEM System in the operation of manufacturing equipment.

The Datacom System is connected to every piece of major equipment in the manufacturing plant. It is a signaling device that allows the operator, through a central control, to call for raw materials, the foreman, technicians etc. In addition, the Datacom System monitors the machines for the purpose of generating print-outs of production reports. Petitioner takes the position that the system, although purchased separately, must be considered an integral part of every piece of production equipment. Petitioner states: "If this device were part of the machine itself, there would clearly be no question".

The Rapistan Conveyor System transports the product from the packaging machine into the finished goods storage area. Petitioner contends that the product is not ready to be sold until the packaging has passed inspection at the end of the conveyor.

Section 1115(a)(12) of the Tax Law provides an exemption from the Sales Tax for machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property . . . for sale, by manufacturing

Regulations Section 528.13(b)(1) of the Tax Law classifies the steps of the manufacturing process as "administration, production or distribution", and reads in part as follows:

- (i) "Administration includes activities . . . 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 side and continuing through the last step of the production where the product is finished and packaged for sale.
- (iii) Distribution includes all operations subsequent to production, such as storing . . . finished products."

Paragraph (c) of this same Regulations section defines the terms 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."
(Emphasis Added)

The MEM System was acquired for the purpose of insuring the most efficient use of electrical power in the entire plant area. In its monitoring phase, the system is not used directly in the production process within the meaning and intent of Regulations Section 528.13(c)(1) of the Tax Law. The fact that in fulfilling its functions the MEM System turns machinery on or off does not establish its predominant use in the production operation.

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The Datacom System prepares production reports, an activity which is an aid to management and, therefore, administrative in nature. In a larger capacity this system acts as a signaling device which enables operators to communicate with other workers and with supervisory personnel. Such use of the Datacom System does not constitute direct use in production, as defined in Regulations Section 528.13, see: Moog Inc., State Tax Commission Decision, June 2, 1982, TSB-H-82(96)S.

The Rapistan Conveyor System extends from the packaging machine into the finished goods storage area. Regulations Section 528.13(b)(ii) terms the packaging operation the last step in the production process. Petitioners product is ready for sale when it leaves the boxing department.

Subsequent transportation and inspection of the packaging and the marking are activities occurring in the distribution phase of the manufacturing operation. The fact that a fractional quantity of the product may be repackaged in the storage area does not change the conveyor's operation to direct and predominant use in production.

Accordingly, since none of the systems under consideration is employed directly and predominantly in the production phase of the manufacturing process, the Petitioner's purchase of these systems is subject to the applicable sales and use taxes.

DATED: May 14, 1985

FRANK J. PUCCIA
Director
Technical Services Bureau

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