

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

TSB-A-85(59)S
Sales Tax
December 4, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S840625B

On June 25, 1984, a Petition for Advisory Opinion was received from Buffalo Forge Company, 490 Broadway, Buffalo, New York 14204.

The issue raised is whether a machine called a Sand Reclamation Unit qualifies for the exemption from sales tax available under Tax Law 1115(a)(12), applicable to machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property for sale. Petitioner states the equipment has a useful life of more than one year.

Petitioner is engaged in the manufacture and sale of industrial equipment, such as centrifugal pumps, fans, drilling machines and bending rolls. An essential operation in the production of this machinery is the pouring of metal castings. In this process it is necessary first to make molds and cores which are formed in core-making machines from sand mixed with special catalyst oils. These sand forms frequently become worn from use or obsolete because of design changes.

The Sand Reclamation Unit breaks up the discarded molds and cores and extracts slag and dust until the sand is re-usable in the manufacturing process. Since the fabrication of molds and cores requires large quantities of specialty sand, the reclamation of sand saves both storage space and production cost.

Petitioner contends the Sand Reclamation Unit is machinery or equipment used directly and predominantly in the manufacturing process and is therefore exempt from New York State sales and use taxes.

Section 1115(a)(12) of the Tax Law provides for an exemption from sales tax with respect to machinery and equipment purchased for use "directly and predominantly" in the production of tangible personal property. . . for sale by manufacturing, processing. . . .

Regulation section 528.13(c)(3) provides that "machinery used to produce other machinery or equipment or parts for self use in production is considered to be used directly in production." The sand produced by the reclamation unit is a supply rather than machinery or equipment or parts. Furthermore, such sand is not produced for sale. Accordingly, the sand reclamation unit cannot qualify for exemption under the theory that it is machinery used to produce other machinery or equipment or parts. Nor can it qualify for exemption as machinery used in the production of tangible personal property for sale inasmuch as the sand is not sold.

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However, section 1105-B of the Tax Law (as added by Chapter 625 of the Laws of 1979) provides for a full exemption from statewide tax with respect to supplies used or consumed directly and predominantly in the production of tangible personal property, where such supplies are purchased on or after March 1, 1981. Accordingly, machinery and equipment used to produce supplies for self use in production of tangible personal property for sale will be considered to be used directly in production but only if such machinery is purchased on or after March 1, 1981.

Such machinery or equipment purchased prior to March 1, 1981 does not qualify for exemption and is subject to applicable state and local sales and use taxes.

DATED: November 7, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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