

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

TSB-A-85 (64) S
Sales Tax
December 5, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S840301A

On March 1, 1984 a Petition for Advisory Opinion was received from Gernatt Asphalt Products, Inc., Taylor Hollow Road, Box 400, Collins, New York 14034.

The issues raised are whether the purchases of welding rod, acetylene and propane gas for use in the maintenance of production equipment are subject to sales tax and whether the purchase of transformers used to convert the incoming electric current from a public utility to a different voltage suitable for operating Petitioner's production equipment is considered to be an exempt purchase of production equipment.

Petitioner produces sand and gravel for sale primarily to asphalt manufacturers and contractors. Petitioner, states the welding supplies are used in the repair and maintenance of production equipment and the electricity processed by the transformers is consumed 100 percent in the operation of plant machinery.

Section 1105 of the Tax Law imposes a tax of four percent upon: "(a) the receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1105-B of the Tax Law provides for a reduction in the four-percent Statewide sales tax rate imposed on tools and supplies used in connection with the repair, maintenance or servicing of machinery and equipment for use and consumption in the production of tangible personal property for sale. Sales and Use Tax Regulations Section 527.14 describes the reduction as follows:

"(c) Tax rates and effective dates. (1) The reduced State tax rates and effective dates provided for by section 1105-B of the Tax Law are:

- (i) Zero percent commencing March 1, 1981 and thereafter;
- (ii) Two percent commencing September 1, 1980 and ending February 28, 1981; and
- (iii) Four percent prior to September 1, 1980."

Accordingly, welding supplies used for the maintenance of production equipment and purchased by Petitioner before March 1, 1981, are subject to Statewide tax as described in the foregoing regulations. On and after March 1, 1981, Petitioner may claim an exemption from New York State and local sales taxes (except for New York City) for purchases of such supplies by providing vendors with a properly completed Exempt Use Certificate (Form ST-121).

Petitioner states that the electricity it purchases runs through a meter owned by the Power Company to a main disconnect switch. The transformers are placed after this switch and the plant wiring is connected to the transformers. Petitioner claims that the electricity so transmitted is consumed entirely in the production process and is therefore exempt from New York State sales and use taxes. Petitioner contends this exemption should be extended to the transformers.

Section 1115(a)(12) provides an exemption from the tax on retail sales imposed under subdivision (a) of Section 1105 for "Machinery and equipment for use and consumption directly and predominantly in the production of tangible personal property . . . for sale, by manufacturing, processing. . . ."

Sales and Use Tax Regulations Section 528.13(c) states, in part:

"(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."

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. All other electrical components are not used directly in production and therefore are not entitled to the exemption contained in Section 1115(a)(12) of the Tax Law. Moreover, Petitioner does not produce electricity for sale whereby the transformers could be deemed to be production machinery or equipment. Accordingly, Petitioner's transformer does not qualify for the production exemption under section 1115(a)(12) of the Tax Law.

DATED: December 5, 1985

s/ANDREW F. MARCHESE
Chief of Advisory Opinions

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