

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

TSB-A-86(26)S  
Sales Tax  
June 26, 1986

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S860318A

On March 18, 1986, a Petition for Advisory Opinion was received from Buffalo Forge Company, 490 Broadway, Buffalo, New York 14204.

The issue is whether Petitioner's CAD/CAM computer is exempt from the sales and use taxes imposed under Articles 28 and 29 of the Tax Law pursuant to the provisions of section 1115(a)(12) of the Tax Law as machinery or equipment for use directly and predominantly in the production of tangible personal property for sale.

Petitioner uses its CAD/CAM computer directly and predominantly to produce individualized drawings which enable its manufacturing group to build equipment for sale to customer requirements.

Petitioner is engaged in the business of manufacturing fabricated metal equipment for industrial and commercial use. Such equipment comprises three classes of products which: (1) handle, condition and control air and other gases, (2) pump water and other fluids, and (3) bend, punch and drill metal.

Each of these product areas, because of the specialized nature of the product, the specialized requirements of Petitioner's customers, the size of apparatus or the placement of such apparatus, require individualized design drawings to enable petitioner's manufacturing group to build to the customer's requirements. In some cases the product is standard or repetitive in nature, however, numerous revisions to manufacturing specifications or standardizations of manufacturing techniques are made requiring new drawings to be issued to petitioner's manufacturing group to build the units properly.

In addition, the CAD/CAM has the capability to directly generate numerical control machine tapes that are used to drive manufacturing equipment.

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

Regulation section 528.13 provides that "production" includes the production line of the plant starting with the handling and storage of raw materials at the plant site and continuing through the last step of production where the product is finished and packaged for sale. Paragraph (c) of Section 528.13 states that the term "directly" means that 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.

Although designing and blueprinting of a product may be an important step in the manufacturing process, the CAD/CAM is not directly used in the production process.

First, the CAD/CAM does not act upon material to form a product for sale since the blueprints produced by the CAD/CAM are not sold.

Secondly, the CAD/CAM has no active causal relationship in the production of the product sold since neither the CAD/CAM nor the blueprints produced by the CAD/CAM play an active role in the production process. By way of comparison, Example 10 contained in regulation section 528.13(c)(3) provides that a lathe used to make machinery which is used to make tangible personal property for sale is deemed to be used directly in production. This is so because of the direct, unbroken chain of action of the lathe on the machinery and the machinery on the product to be sold. Since this direct chain of action is absent in the case of the CAD/CAM, it does not satisfy this condition.

Finally, the CAD/CAM is clearly not used in the handling or storage of materials or the packaging of products.

Since the CAD/CAM is not used directly in production within the meaning and intent of the Tax Law, it does not qualify for exemption under section 1115(a)(12).

Regarding the production of numerical control tapes, if the tapes are used to control machinery or equipment that is used to produce a product for sale, the machinery and equipment used to produce the tape would qualify for the exemption provided under 1115(a)(12) of the Tax Law.

However, because machinery and equipment must be used 50% or more of the time directly in production to be exempt from tax, the CAD/CAM will qualify only if over 50% of its use is producing numerical control tapes.

DATED: June 26, 1986

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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