

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

TSB-A-88(23)S
Sales Tax
March 17, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S871125A

On November 25, 1987, a Petition for Advisory Opinion was received from Grumman Aerospace Corporation B16-030, Bethpage, New York 11714.

The issue raised is whether certain laboratory furniture qualifies for exemption from sales and use tax under either §1115(a)(10) or §1115(a)(12) of the Tax Law.

Petitioner purchased laboratory furniture including work stations, multi-wired legs and pedestals, etc., which it utilizes in its avionics laboratory. The laboratory is used to test incoming electronic equipment which is either manufactured by Petitioner or by an outside sub-contractor. If tests and specifications set by the U.S. Navy are met, the equipment is then integrated into both developmental and production type aircraft.

Section 1115(a)(10) of the Tax Law provides an exemption for "[t]angible personal property purchased for use or consumption directly and predominantly in research and development in the experimental or laboratory sense.

Section 528.11(b) of the sales tax regulations defines the term "research and development" as follows for purposes of the research and development exemption under section 1115(a)(10) of the Tax Law.

(b) Research and development. (1) Research and development, in the experimental or laboratory sense, means research which has as its ultimate goal:

- (i) basic research in a scientific or technical field of endeavor;
- (ii) advancing the technology in a scientific or technical field of endeavor;
- (iii) the development of new products;
- (iv) the improvement of existing products; and
- (v) the development of new uses for existing products.

(2) Research and development in the experimental or laboratory sense does not include:

- (i) testing or inspection of materials or products for quality control

Accordingly, Petitioner's laboratory furniture does not meet the requirements for exemption for tangible personal property used in research and development in the experimental or laboratory sense as contained in regulation section 528.11. Petitioner's furniture is not used for research or experimentation but, rather, is used for testing of materials or products for quality control.

Section 1115(a)(12) of the Tax Law provides an exemption for "[m]achinery or equipment for use or consumption directly and predominantly in the production of tangible personal property ... for sale, by manufacturing "

Section 528.13 (b), defines the term "production"

(b) Production. (1) The activities listed in paragraph (a)(1) of this section are classified as administration, production or distribution.

(i) Administration includes activities such as sales promotion general office work, credit and collection, purchasing, maintenance, transporting, receiving and testing of raw materials and clerical work in production 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 site and continuing through the last step of production where the product is finished and packaged for sale.

(iii) Distribution includes all operations subsequent to production, such as storing, displaying, selling, loading and shipping finished products.

(2) The exemption applies only to machinery and equipment used directly and predominantly in the production phase. Machinery and equipment partly used in the administration and distribution phases does not qualify for the exemption, unless it is used directly and predominantly in the production phase.

(3) The determination of when production begins is dependent upon the procedure used in a plant. If on receiving raw materials, the purchaser weighs, inspects, measures or tests the material prior to placement into storage, production begins with placement into storage, and the prior activities are administrative. If the materials are unloaded and placed in storage for production without such activities, the unloading is the beginning of production.

Example 1: A crane is used to unload raw materials, which are immediately placed in storage at a

plant. From the storage site, the material is placed on an assembly line without testing. The crane is being used in production.

Example 2: Testing equipment used to test incoming materials is not used in production and is subject to tax.

(4) Production ends when the product is ready to be sold.

The testing or inspection of materials or products for quality control may take place during either the administrative or production phase of an operation. To the extent that machinery or equipment is used directly and predominantly for quality control testing in the production phase, it will qualify for the exemption under section 1115(a)(12) of the Tax Law. However, as illustrated by Example 2 of regulation section 528.13 above, testing equipment used to test incoming materials is deemed to be used in administration rather than in production and, therefore, does not qualify for exemption under section 1115(a)(12) of the Tax Law.

Accordingly, because Petitioner uses its laboratory furniture to test incoming electronic equipment, it does not qualify for the production exemption under section 1115(a)(12) of the Tax Law.

DATED: March 17, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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