

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

TSB-A-88 (52)S  
Sales Tax  
October 17, 1988

STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S880811A

On August 11, 1988, a Petition for Advisory Opinion was received from Felix Industries, Inc., Route 202 and Lovell Street, Lincolndale, New York 10540.

The issue raised is whether a parent corporation can absorb the assets of its subsidiary without incurring a sales tax liability on the transfer.

Felix Industries, Inc. owns 100% of the stock of C. & F. Equipment Company. C & F Equipment Company holds title to construction equipment used solely by Felix Industries. Felix Industries wishes to absorb the assets of C & F Equipment Company without incurring a sales or use tax liability on the transfer.

Section 1105(a) of the Tax Law imposes a sales tax upon "[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1101(b)(4)(iii) states, in part: "The term retail sale does not include: ...(B) The distribution of property by a corporation to its stockholders as a liquidating dividend."

Section 526.6 of the Sales Tax Regulations states, in part:

Retail sale. [Tax Law, § 1101(b)(4)] (a) The term "retail sale" or "sale at retail" means the sale of tangible personal property to any person for any purpose, except as specifically excluded.

(d) Exclusions relating to corporate and partnership transactions.

(i) The following transfers of property are not retail sales:

\* \* \*

(ii) The distribution of property by a corporation to its stockholders as a liquidating dividend.

\* \* \*

The transfers described in this paragraph between...corporations and stockholders, are excluded from the definition of "retail sale" because while the form of ownership of the property is changed, there is a continuity of interest in the property transferred.

\* \* \*

(9) Corporate liquidations. (i) The distribution of tangible personal property by a corporation to its stockholders as a liquidating dividend is not a retail sale.

(ii) The liquidating dividend may be as a result of a partial or complete liquidation.

(iii) The liquidating dividend must be declared in accordance with the law of the state of incorporation, to qualify for exclusion from the definition of "retail sale".

Accordingly, as Petitioner owns stock issued by its subsidiary, C & F Equipment Company, the assets of C & F Equipment Company may be transferred to Petitioner without the incurrance of a sales tax liability by Petitioner, provided that: such assets are transferred to Petitioner as a liquidating dividend; the liquidating dividend results from either a partial or complete liquidation of C & F Equipment Company; and the liquidating dividend is declared in accordance with the laws of the state in which C & F Equipment Company was incorporated.

It is noted that even though a liquidating dividend may qualify for exclusion from sales tax, the transfer of assets from a subsidiary to the parent corporation may constitute a bulk sale. Section 537.1 of the Sales Tax Regulations defines the term bulk sale as any sale, transfer, or assignment in bulk of any part or the whole of business assets, other than in the ordinary course of business, by a person required to collect tax and pay the same over to the Tax Commission.

Inasmuch as Petitioner may be liable for filing a notice of bulk sale with the Department of Taxation and Finance, Petitioner may wish to contact the Central Office Audit Bureau, Bulk Sales Unit, Department of Taxation and Finance, W. A. Harriman Campus, Albany, N.Y. 12227 for assistance in complying with its bulk sales obligations.

DATED: October 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.