

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

TSB-A-89 (3)S
Sales Tax
January 31, 1989

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S880928A

On September 28, 1988, a Petition for Advisory Opinion was received from Lindemann Recycling Equipment Inc., 500 Fifth Avenue, New York, New York 10010.

The issue raised is whether the sale of machinery used in the processing of scrap material is exempt from sales tax.

Petitioner sells machinery and equipment to companies in the solid waste processing industry. Petitioner sells two types of machinery. The first type is used to recycle metal, wood, paper and cardboard. The second type of machinery is used to compact waste for landfill storage and is not used for recycling.

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

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

Regulation section 528.13(c) provides that:

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.

Machinery or equipment is used predominantly in production, if over 50 percent of its use is directly in the production phase of a process.

Additionally, regulation section 528.13(b) provides that the section 1115(a)(12) exemption

applies only to machinery and equipment used directly and predominantly in the production phase. Machinery and equipment predominantly used in administration or distribution does not qualify for exemption. Regulation section 528.13(b) provides:

- (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.

A person engaged in the processing of scrap material for sale is engaged in "processing" within the meaning of section 1115(a)(12) of the Tax Law. Hydraulic guillotines, alligator sheers, baling presses, turnings crushers and special devices for breaking scrap to change its condition from unusable to usable materials for remelting purposes qualify as being used directly in production.

Accordingly, if machinery and equipment is used directly and predominantly (more than 50%) to process wood, paper, cardboard and metal which will be sold, such machinery and equipment qualifies for exemption under section 1115(a)(12) of the Tax Law.

In order to sell equipment tax exempt, Petitioner must obtain a properly completed Exempt Use Certificate (Form ST-121) from its customers not later than ninety days after delivery of such equipment. If any of Petitioner's customers are governmental entities, Petitioner may accept such entities' governmental purchase order in lieu of an Exempt Use Certificate.

Petitioner has also inquired regarding the taxability of machinery used to compact waste prior to its disposal in a landfill. Such compacted waste is not intended to be sold.

Section 528.13(d) of the sales and use tax regulations provides for an exemption with respect to:

Machinery or equipment used for disposing of industrial waste, as a part of a process for preventing water or air pollution ... if

- (i) the machinery or equipment is purchased by a

manufacturer and used predominantly to actually treat, bury or store waste material from a production process, and

(ii) over 50 percent of the waste treated, buried or stored results from the production process.

Machinery used to compact solid waste prior to its disposal in a landfill does not qualify for exemption under section 528.13(d) of the sales and use tax regulations because such machinery is not used as a part of a process for preventing water or air pollution. Moreover, over fifty percent of the waste must result from a production process. Solid waste materials collected from its customers by a solid waste handler do not qualify as waste which results from a production process. Additionally, the exemption applies to machinery purchased by a manufacturer. Solid waste handlers do not qualify as manufacturers for purposes of the exemption under regulation section 528.13(d).

Accordingly, machinery or equipment used by a solid waste handler to compact solid waste prior to its disposal in a landfill does not qualify for exemption from sales and use tax.

DATED: January 31, 1989

FRANK J. PUCCIA
Director
Technical Services

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