

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

TSB-A-90(58)S
Sales Tax
December 24, 1990

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S900823B

On August 23, 1990 a Petition for Advisory Opinion was received from Vigliotti Recycling Corp., 50 Hopper Street, Westbury, N.Y. 11590.

The issue raised by Petitioner, Vigliotti Recycling Corp., is whether machinery and equipment used to recycle tangible personal property qualifies for exemption from sales tax under Section 1115(a)(12) of the Tax Law.

For a fee Petitioner accepts, at its facility, mixed construction and demolition material which it converts into various products. The products produced include wood chips, agricultural soil, concrete and rock, and metals and cardboard. This in total accounts for approximately 80% to 85% of the mixed material, leaving the rest as waste product for Petitioner to dispose of at a local landfill.

The following is the composition of its manufactured products line. Wood accounts for 30% of its materials flow. Soil accounts for 20% of its materials flow. Metal accounts for 15% of its materials flow. Cardboard accounts for 5% of its materials flow. Rock and concrete account for 10% of its materials flow.

Of Petitioner's products, metals and cardboard are sold directly to secondary recyclers. Petitioner has an agreement with the Town of Islip where it provides them with wood chips. It donates the soil to the Town of North Hempstead for use as cover for its landfill.

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 casual 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.

In Lindemann Recycling Equipment, Inc., Adv Op Comm T & F, January 31, 1989, TSB-A-89(3)S it was held that a person engaged in the processing of scrap material for sale was 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 were held to qualify as being used directly in production. Petitioner's activities in the instant case are similar to those for which an exemption was allowed in the aforesaid opinion.

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

Because Section 1115(a)(12) is limited only to machinery and equipment used to produce a product for sale, only that machinery and equipment used by Petitioner more than 50% of the time to produce cardboard and metal for sale qualifies for the exemption.

DATED: December 24, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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