

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

TSB-A-90(9)S
Sales Tax
March 12, 1990

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S891017B

On October 17, 1989 a Petition for Advisory Opinion was received from Segal Equipment Associates, 2206 Genesee Street, Utica, New York 13502.

The issue raised by Petitioner, Segal Equipment Associates, is whether Petitioner may purchase a "CAT-SCAN" machine for resale and whether its lease charges for the use of such machine are exempt from sales tax under Section 1115(a)(12) of the Tax Law.

Petitioner currently owns a "CAT-SCAN" machine which it leases on a monthly basis to a corporation that uses the machine to produce tangible images for diagnostic purposes. Petitioner is considering future purchases and leasing to others of similar equipment.

Section 526.6(c) of the Sales and Use Tax Regulations provides:

Resale exclusion. (1) Where a person, in the course of his business operations, purchases tangible personal property or services which he intends to sell, either in the form in which purchased, or as a component part of other property or services, the property or services which he has purchased will be considered as purchased for resale, and therefore not subject to tax until he has transferred the property to his customer.

526.7 Sale, selling or purchases.

(2) Among the transactions included in the words sale, selling or purchase are exchanges, barter, rentals, leases or licenses to use or consume tangible personal property. (Emphasis supplied)

Therefore if the Petitioner exclusively leases the "CAT-SCAN" machine to another entity, it may purchase the machine for resale and will not be subject to the imposition of sales tax upon its purchase.

Section 1115(a)(12) of the Tax Law exempts "machinery and equipment for use or consumption directly and predominantly in the production of tangible personal property ... for sale, by manufacturing..." from the imposition of sales tax.

The investment tax credit for Personal Income Tax purposes was allowed under Section 606(a) of the Tax Law to a taxpayer operating in a manner similar to Petitioners' customers. (Albany Equipment Management Associates, Adv Op Comm T & F, TSB-A-88-(10)I). However, while the investment tax credits under the Personal Income Tax and Franchise Tax on Business Corporations are similar for machinery and equipment to the sales tax exemption for machinery and equipment, the sales tax exemption set forth in Section 1115(a)(12) of the Tax Law contains an additional

TSB-A-90(9)S
Sales Tax
March 12, 1990

requirement not found in the investment tax credit sections. The tangible personal property produced must be "for sale."

This distinction has been applied to snow making equipment. The Tax Commission has allowed the investment tax credit (Matter of Plattskill Mountain Ski Center, Inc, Dec St Tax Comm, March 9, 1984, TSB-H-85(28)C), but has not allowed the sales tax exemption (Matter of Shanty Hollow Corp, Dec St Tax Comm, March 9, 1984, TSB-H-84(60)S). The Decision of the State Tax Commission was affirmed by the Appellate Division in Shanty Hollow v. New York State Tax Commission, 111 A.D. 2d 968.

Since Petitioner's customer is using the "CAT-SCAN" machine to provide a diagnostic service and not for the production of tangible personal property for sale, the lease payments on the "CAT-SCAN" machine do not qualify for exemption from sales tax under Section 1115(a)(12) of the Tax Law. If, on the other hand, Petitioner's customer merely sells photographs and negatives to others and does not perform any diagnostic services or issue any reports, it would be considered to be making sale of tangible personal property which is subject to sales tax, and would therefore qualify for exemption from sales tax on the lease payments it made to Petitioner.

DATED: March 12, 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.