

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

TSB-A-92 (18)S
Sales Tax
March 2, 1992

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S911009A

On October 9, 1991 a Petition for Advisory Opinion was received from Akins Construction Ltd., Rt. 1, Box 108, Ogdensburg, N.Y. 13669.

The issue raised by Petitioner, Akins Construction Ltd., is whether the receipts from its charge for materials incorporated into the floor and walls of a bunker silo qualify for the exemption from sales and compensating use tax as provided under Section 1115(a)(6) of the Tax Law and Section 528.7(a)(1)(ii)(b) of the Sales and Use Tax Regulations.

Petitioner is in the business of performing on site construction of bunker silos for farmers for use in making and storing silage. Petitioner uses cement and other material in constructing the bunker silos. Bunker silos consist of a poured concrete slab for the floor, with or without the addition of side walls. When Petitioner constructs a bunker silo which will include side walls, the outer edges of the area to be covered by the poured floor are excavated to allow for the thickness of the outer edges of the poured floor to be varied in accordance with the height and weight of the side walls.

Section 1105 of the Tax Law states, in part:

Imposition of sales tax.--. . .there is hereby imposed and there shall be paid a tax. . .upon:

(c) The receipts from every sale, except for resale of the following services:

(3) Installing tangible personal property. . .except:

(iii) for installing property which, when installed will constitute an addition or capital improvement to real property, property or land. . .

Section 1110 of the Tax Law states, in part:

Imposition of compensating use tax.--Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state. . ., except as otherwise exempted under this article, (A) of any tangible personal property purchased at retail. . .

Section 1115 of the Tax Law states, in part:

Exemptions from sales and use taxes.--(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

(6). . .tangible personal property for use in erecting, adding to, altering or improving a silo used in farming to make and store silage on a farm, provided such tangible personal property is to become an integral component of such silo.

Section 528.7 of the Sales and Use Tax Regulations states, in part:

Farming. [Tax Law, §§1105(c)(3) 1115(a)(6)] (a) Exemption.

(1)(i) All tangible personal property for use or consumption. . .in the production for sale of tangible personal property by farming, with the exception of property which will be incorporated into a building or structure is exempt from the sales and compensating use tax.

(ii) Notwithstanding the exception stated in subparagraph (i) of this paragraph:

(b) all tangible personal property for use in erecting, adding to, altering or improving a silo used in farming to make and store silage on a farm is exempt provided such tangible personal property is to become an integral part of such silo. However, this exemption does not apply to materials used in the foundations of silos.

Accordingly, when Petitioner installs a bunker silo which only consists of a poured concrete floor, without sidewalls, and which does not require that the outer edges of the floor vary in thickness from the rest of the floor, the materials which are used in the job will be considered to become an integral part of the bunker silo and Petitioner's purchase and use of the materials will be exempt from sales tax under the provisions of Section 1115(a)(6) of the Tax Law and Section 528.7 of the Sales and Use Tax Regulations.

When Petitioner installs a bunker silo consisting of a poured concrete floor and sidewalls, the materials which are used in the sidewalls will be considered to become an integral part of the bunker silo and Petitioner's purchase and use of the materials will qualify for the exemption from sales tax provided under Section 1115(a)(6) of the Tax Law and Section 528.7 of the Sales and Use Tax Regulations.

However in the latter case, only a portion of the materials which are used in the poured floor will qualify for the exemption provided under Section 1115(a)(6) of the Tax Law and Section 528.7 of the Regulations, while the remainder of the materials used will be subject to the tax imposed under either Section 1105(a) or 1110 of the Tax Law. Because the thickness of the outer edges of the poured floor will vary in accordance to the height (and thereby weight) of the side walls, that portion of the poured floor will be considered to serve the same function as a supportive foundation thereby alleviating the necessity of installing a separate supportive foundation, and accordingly will not qualify for the exemption provided under Section 1115(a)(6) of the Tax Law or Section 528.7 of the Sales and Use Tax Regulations. Petitioner will be liable for paying the sales tax

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imposed under Section 1105(a) or the compensating use tax imposed under Section 1110 of the Tax Law on the portion of materials used in the thickened area of the floor.

Petitioner's receipts from charges to customers for constructing the bunker silos, except for the portion which serves the function of a supportive foundation, will be also be exempt from sales tax under the provisions of Section 1115(a)(16) of the Tax Law and Section 528.7 of the Sales and Use Tax Regulations. Petitioner's receipts from charges to customers for the thickened areas of the floor will be exempt from tax under the provision of Section 1105(c)(3)(iii) of the Tax Law as the manner of installation of such area is considered to meet the conditions required for a capital improvement.

Petitioner should obtain a properly completed form ST-125, Farmer's Exemption Certificate and form ST-124, Certificate of Capital Improvement, where applicable, from the customer as substantiation for not collecting sales tax on the receipts from charges to the customer.

Petitioner may purchase the materials for use in the bunker silo tax exempt by presenting the building supplier with a properly completed Form ST-120.1, Contractor Exempt Purchase Certificate. However, Petitioner will be liable for the compensating use tax on that portion of materials which are incorporated in the thickened area of the floor.

DATED: March 2, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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