

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

TSB-A-93 (34)S
Sales Tax
May 18, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S921207D

On December 7, 1992, a Petition for Advisory Opinion was received from Hendrickson Bros., Inc., 63 N Central Ave., Box 2006, Valley Stream, NY 115822006.

The issue raised by Petitioner, Hendrickson Bros., Inc., is whether a contractor may purchase materials which are to be incorporated into the property of an organization described in Section 1116(a)(1) of the Tax Law without payment of sales tax.

Petitioner is a subcontractor for a general contractor who has a contract to widen and lengthen an existing entrance-exit ramp to the Meadowbrook Parkway. The land and the ramp is owned by the New York State Parks Department and will remain under the jurisdiction of said department.

Section 1105(a) of the Tax Law imposes 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)(i) of the Tax Law in part defines a "retail sale" as:

... a sale of any tangible personal property to a contractor, subcontractor or repairman for use or consumption in erecting structures or buildings, or building on, or otherwise adding to, altering, improving, maintaining, servicing or repairing real property, property or land, as the terms real property, property or land are defined in the real property tax law, is deemed to be a retail sale regardless of whether the tangible personal property is to be resold as such before it is so used or consumed

Section 1115(a)(15) of the Tax Law provides an exemption from the sales tax imposed by section 1105(a) of the Tax Law for:

Tangible personal property sold to a contractor, subcontractor or repairman for use in erecting a structure or building of an organization described in subdivision (a) of section eleven hundred sixteen, or adding to, altering or improving real property, property or land of such organization, as the terms real property, property or land are defined in the real property tax law; provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property.

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Section 1115(a)(16) of the Tax Law provides an exemption from the sales tax imposed by Section 1105(c) of the Tax Law for:

Tangible personal property sold to a contractor, subcontractor or repairman for use in maintaining, servicing or repairing real property, property or land of an organization described in subdivision (a) of section eleven hundred sixteen, as the terms real property, property or land are defined in the real property tax law; provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property.

Section 1116(a)(1) of the Tax Law provides that a sale shall not be subject to sales tax when it is made to:

The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services or property of a kind not ordinarily sold by private persons;

Section 541.1(e) of the Sales and Use Tax Regulations provides that:

Tangible personal property purchased by a contractor that is to become an integral component part of real property owned by an organization described in section 1116(a) of the Tax Law is exempt from the New York State and local sales tax. (For contracts with exempt organizations, see section 541.3 of this Part.)

Since Petitioner is widening and lengthening an existing entrance-exit ramp upon property which is owned by New York State, it may purchase tangible personal property, which will be incorporated as integral components of such property, tax exempt in accordance with Sections 1101(b)(4)(i), 1105(a), 1115(a)(15), 1115(a)(16) and 1116(a)(i) of the Tax Law and Section 541.1(e) of the Sales and Use Tax Regulations. Petitioner should furnish its material suppliers with a properly completed Contractor Exempt Purchase Certificate (Form ST-120.1).

DATED: May 18, 1993

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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