

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

TSB-A-93 (8) S
Sales Tax
January 25, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920831C

On August 31, 1992 a Petition for Advisory Opinion was received from Akzo Salt, Inc., P.O. Box 352, Clarks Summit, Pa. 18411.

The issues raised by Petitioner, Akzo Salt, Inc., are:

1. Whether conveyor belt systems, elevator shafts, screening systems, other related equipment and accessories such as roof bolts, electrical wiring and switches qualify for the exemption provided under Section 1115(a)(12) of the Tax Law.
2. Whether items of power equipment such as stations, substations, relay units, wiring and cables, transformers and switches qualify for the exemption provided under Section 1115(a)(12) of the Tax Law.
3. Whether machinery which is used to mine salt qualifies for the exemption provided under Section 1115(a)(12) of the Tax Law.

Petitioner operates a sub-surface mine for the purpose of extracting salt for sale. Petitioner's operations require the use of machinery and equipment for the actual mining of the salt and conveyor belt systems for transporting the salt from newly mined locations to elevators which transport the salt to the surface. After the salt is brought to the surface it is processed through Petitioner's screening system prior to being graded. During the mining process electric power is delivered to a substation which in turn delivers the power to various locations throughout the mine. As the mine is constantly expanding Petitioner is required to extend the cabling, transformers and power units on a regular or as needed basis.

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:

(12) Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property ... for sale, by manufacturing, processing ... mining or extracting

(c) Fuel, gas, electricity, and steam, and gas, electric ... and steam service of whatever nature for use or consumption directly and exclusively in the production of tangible personal property ... for sale by manufacturing, processing ... mining, extracting ... shall be exempt from the taxes imposed under subdivisions (a) and (b) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten.

Petitioner's conveyor belt system is located within the mine and is used for the purpose of transporting mined salt from the mining area to the elevators. The elevators transport the salt from the subsurface mine to the surface where the salt is subject to a screening process for sizing purposes. Accordingly, as the conveyor belt system, the elevators and the screening system are all used directly and predominantly by Petitioner in the production of salt for sale the purchases of these items of machinery and equipment qualify for the sales tax exemption provided under Section 1115(a)(12) of the Tax Law. The labor to install the system would be subject to local sales tax unless such installation constituted a capital improvement.

Petitioner uses the roof bolts for the purpose of reinforcing the ceiling or "roof" of areas which are being or have been mined. As the roof bolts are not being used directly and predominantly in Petitioner's production process but are used to reinforce the realty, Petitioner's purchases of the bolts does not qualify for the sales tax exemption provided under Section 1115(a)(12) of the Tax Law.

All electrical parts actually attached to a qualifying piece of production machinery or equipment and the electrical wire from the production machinery and equipment to the power source (panel box), including any switches, are deemed to assume the identity of the machinery and equipment and are therefore eligible for the same exemption as the machinery and equipment. All other electrical components used prior to the power source are not used directly in production and are therefore not eligible for the production exemption. However, the installation of these materials may constitute a capital improvement to real property. A charge for an installation which becomes a capital improvement to real property is not subject to sales or use tax. (See, New York State and Local Sales Tax Information for Manufacturers, New York State Department of Taxation and Finance Publication 852 (9/86) at page 11). Accordingly, any electrical wiring attached directly to the mining machinery or equipment and extending from the mining machinery and equipment to the power source, including any switches, are considered to be part of such machinery and equipment and qualify for the exemption from sales tax provided under Section 1115(a)(12) of the Tax Law.

Items of power equipment such as stations, substations, relay units, wiring and cable, transformers and switches generally will not qualify for the exemption from sales tax provided under Section 1115(a)(12) of the Tax Law as such items are considered to be used for the purpose of transmitting electricity throughout Petitioner's mine and are not-considered to be used directly and predominantly for the production of tangible personal property for sale by mining. Gernatt Asphalt Products, Inc., Adv Op, St Tx Comm, December 5, 1985, TSB-A-85(64)S.

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Petitioner's machinery, whether purchased or leased, which is used to mine salt and to prepare the mine for normal mining operations is considered to be used directly and predominantly to produce tangible personal property for sale by mining and qualifies for the exemption from sales tax provided under Section 1115(a)(12) of the Tax Law.

DATED: January 25, 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.