

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

TSB-A-95 (18)S
Sales Tax
June 5, 1995

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S941228A

On December 28, 1994, a Petition for Advisory Opinion was received from NF Associates, 810 Ridge Road, Webster, New York 14580.

The issue raised by Petitioner, NF Associates, is whether its purchases of computer equipment, software and supplies qualify for exemption from sales tax under Section 1115(a)(12) of the Tax Law.

Petitioner uses its computer, software and supplies to develop and produce technical manuals for its customers. Once the development of these manuals is complete, a hard copy, paper based version of the manual in the form of a camera ready mechanical or a computer disk that can be used to print the manual is delivered to the customer. These manuals are then reproduced and distributed by the customer, usually accompanying their saleable product.

Section 1115(a)(12) of the Tax Law exempts from sales and use taxes "[m]achinery or equipment for use or consumption directly and predominantly in the production of tangible personal property. . . for sale, by manufacturing, processing. . . ."

Section 528.13(c)(1) of the Sales and Use Tax Regulations defines the term "directly" to mean the machinery and equipment must, during the production process (i) act upon or effect a change in the material to form the product to be sold, or, (ii) have an active causal relationship in the production of the product to be sold, (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 and equipment used in activities collateral to the production process are not deemed to be used directly in production.

Section 528.13(c)(4) of the Sales and Use Tax Regulations provide that machinery and equipment are used "predominantly" in the production of tangible personal property if they are so employed over 50% of the time.

Section 528.13(a)(1)(iii) of the Sales and Use Tax Regulations provides an exemption for: "Parts with a useful life of one year or less, tools or supplies for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale by manufacturing, processing, generating, assembling, refining, mining or extracting."

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Section 1101(b)(6) of the Tax Law defines tangible personal property as, "Corporeal personal property of any nature. . . . Such term shall also include pre-written computer software, whether sold as part of a package, as a separate component, or otherwise, and regardless of the medium by means of which such software is conveyed to a purchaser."

It has been held that purchases of computer equipment used to produce and edit manuscripts on magnetic tapes which are then sent to a compositor for use in producing a final product, are exempt from sales tax provided such equipment is used predominantly for such purposes. Matthew Bender & Co., Adv. Op St Tx Comm, Sept. 24, 1980, TSB-H-80(191)S.

Consequently, to the extent that Petitioner is producing tangible personal property for sale (manuals used for reproduction in the form of camera ready mechanicals or computer disks that can be used to print the manual), its purchases of computers used directly to produce such items qualify for the exemption under section 1115(a)(12) of the Tax Law provided they are used more than 50% of the time for such purposes. Pre-written computer software (tangible personal property) used directly and predominantly with exempt equipment may qualify as a part or a supply in accordance with Section 528.13(a) of the Sales and Use Tax Regulations.

DATED: June 5, 1995

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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