STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. S970811A

On August 11, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from Jet Sanitation Service Corp., 228 Blydenburgh Road, Central Islip, New York 11722-5006.

The issue raised by Petitioner, Jet Sanitation Service Corp., is whether roll-off containers purchased for the exclusive use of the collection of hot ash used in manufacturing are exempt from sales and compensating use tax.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner purchased containers specifically designed for the collection of hot ash. Containers were customized for the specific job of collecting and draining hot ash. Standard open containers would not suffice for this purpose and would result in violation of the law. Petitioner collects hot ash generated by Company A (a company jointly owned by a municipality and a private corporation) which is used by a third party, Company B, exclusively for the production of landfill capping material. Petitioner invoices Company A for the collection and haulage of the ash, and provided copies of such invoices with the Petition. These invoices include charges for collection of ash, garbage transfer, dump fees, holiday service, waiting time, and container repair.

Applicable Law and Regulations

Section 1105(a) of the Tax Law imposes a tax on the receipts from every retail sale of tangible personal property, except as otherwise provided.

Section 1115 of the Tax Law provides, in part:

> (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:
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> * * *
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> (12) Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, ... for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, ... but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus....

Section 528.13 of the Sales and Use Tax Regulations provides, in part:

(a) Exemption. (1) Exemption from statewide tax. An exemption is allowed from the tax imposed under subdivisions (a) and (c) of section 1105 of the Tax Law, and from the compensating use tax imposed under section 1110 of the Tax Law, for receipts from sales of the following:

(i) Machinery or equipment (including parts with a useful life of more than one year) used or consumed directly and predominantly in the production for sale of tangible personal property, ...

* * *

(b) Production. (1) The activities listed in paragraph (a)(1) of this section are classified as administration, production or distribution.

(i) Administration includes activities such as sales promotion, general office work, credit and collection, purchasing, maintenance, transporting, receiving and testing of raw materials and clerical work in production such as preparation of work, production and time records.

(ii) Production includes the production line of the plant starting with the handling and storage of raw materials at the plant site and continuing through the last step of production where the product is finished and packaged for sale.

* * *

(c) Directly and predominantly. (1) "Directly" means the machinery or equipment must, during the production phase of a process:
(i) act upon or effect a change in material to form the product to be sold, or

(ii) have an active causal relationship in the production of the product to be sold, or

(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.

* * *

(4) Machinery or equipment is used predominantly in production, if over 50 percent of its use is directly in the production phase of a process.

Opinion

Petitioner is a waste removal contractor. The invoices provided by Petitioner show that Petitioner is receiving fees from Company A for the hauling and dumping of ash. Company B purchases the ash for the production of the landfill capping material. To qualify for the manufacturing exemption, the containers must be directly involved in the production phase of a process. Under Section 528.13(b)(1)(ii) of the Sales and Use Tax Regulations, production includes the production line of the plant starting with the handling and storage of raw materials at the plant site. Petitioner picks up and transports the raw material to Company B's manufacturing facility. The containers do not act upon or effect a change in the ash to form the product being sold. Equipment used to transport raw material to a plant for processing is not directly involved in production. (See Matter of St. Joe Resources v State Tax Commn., 72 NY2d 943) Petitioner is merely collecting and hauling incinerator ash from Company A to Company B's facility which subsequently begins production of the landfill capping material.

Petitioner's purchases of roll-off containers are not considered to be purchases of machinery or equipment used directly in the manufacturing process, but are merely specialized equipment used in the collection and transport of ash. Therefore, these containers are not exempt from sales and compensating use tax when purchased by Petitioner.

DATED: February 25, 1998

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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