

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

TSB-A-98(19)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S970811B

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, NY 11722-5006.

The issue raised by Petitioner, Jet Sanitation Service Corp., is whether compactors purchased for the exclusive use of collecting and crushing cardboard for recycling are exempt from sales and compensating use taxes.

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

Petitioner is a waste removal contractor. It contracts with customers to remove cardboard which it sells to an affiliated company for recycling. Petitioner purchased five mechanized compactors for the exclusive use of the collection of cardboard to be recycled. Petitioner placed the compactors at various shopping center locations. Each compactor required the placement of a concrete pad and installation of electrical service to run a hydraulic system. Once installed, the compactor cannot be accessed from the outside and its use is restricted to the collection and crushing of cardboard for recycling. The compactors crush and densify the cardboard material through the use of a hydraulic ram system run by an electric motor.

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 (a) 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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(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...

Section 528.13 of the New York State 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 the sale of the following:

(i) Machinery or equipment ... 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 being 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. It contracts with customers to remove cardboard which it sells to recyclers. The cardboard is stored in compactors which are then used to crush the material. Petitioner then transports the cardboard to the recycler. To qualify for exemption as production equipment under Section 1115(a)(12) of the Tax Law, more than 50% of the compactors' use must be directly in production. Petitioner's compactors are used as collection devices. The compactor function is incidental to the compactors' use in the collection and storage of the cardboard until Petitioner picks it up. As such, the compactors are not used directly in production for purposes of Section 1115(a)(12). Therefore, the purchase of the compactors by Petitioner is subject to sales and compensating use tax.

DATED: March 23, 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.