

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

TSB-A-98(47)S
Sales Tax
July 31, 1998

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S980205A

On February 5, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Constant Velocity Systems, Inc., 22 Corporate Drive, Clifton Park, New York, 12065. Petitioner, Constant Velocity Systems, Inc., submitted additional information pertaining to the Petition on April 2, 1998.

The issue raised by Petitioner is whether Petitioner is required to collect sales tax on sales of its grinding machines.

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

Petitioner manufactures a grinding machine designed to manufacture component parts of automotive axle shaft joints called constant velocity (CV) joints. The machine regrinds worn CV joints, and new ball bearings and other parts are added to make the CV joint "new." These remanufactured joints are sold as new in the automotive parts industry.

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 1105(c) of the Tax Law imposes a tax on the receipts from every sale, except for resale, of the following services:

* * *

(3) Installing tangible personal property, excluding a mobile home, or maintaining, servicing, or repairing tangible personal property, including a mobile home, not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith.

Section 1115 (a) of the Tax Law provides, in part:

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, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting....

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

(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.

* * *

Example 13: A company produces a machine to produce new paper machine rolls and to recondition old paper machine rolls for its customers. The machine is to be used for production 70 percent of the time and for reconditioning 30 percent of the time. Reconditioning is a repair service to tangible personal property, and machinery used for that purpose is not in production. However, as the machine in this example will be used directly in production over 50 percent of the time, it qualifies for exemption.

Opinion

Petitioner makes sales of equipment used to remanufacture used CV joints for automobiles. These machines grind down the existing CV joint and new parts are added to make the CV joint usable again. Machinery used directly and predominantly in production of tangible personal property for sale qualifies for exemption from sales tax. To qualify for this exemption, more than 50% of a machine's use must be in producing tangible personal property for sale. When Petitioner makes sales of these machines to automotive repair shops for use in grinding down a customer's worn CV joint and returning the remanufactured CV joint back to the same customer, the machine is not being used in production but rather is used to repair the CV joint, and would not qualify for the production

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exemption. If the repair shop is using the machine to grind down worn CV joints to keep as inventory for sale to customers, and not returning the remanufactured part back to the same customer who furnished that part for repair, this use would qualify the machinery for the production exemption under Section 1115(a)(12) of the Tax Law, provided more than 50% of its use is in producing the CV joints for sale.

When the machine is sold to remanufacturers, parts dealers, and other distributors of CV joints who use the machines to produce CV joints for sale, the machine would qualify as being used directly in production for purposes of Section 1115(a)(12) of the Tax Law. The machine would be exempt if more than 50% of the machine's use is in this production activity.

If these machines are delivered outside New York for use outside New York, these sales are not subject to sales tax and Petitioner would not be required to collect sales or use tax on such sales.

Petitioner should obtain from its customers a properly completed Exempt Use Certificate (Form ST-121) within 90 days after delivery when making exempt sales of these machines. See Section 1132(c) of the Tax Law and Section 532.4 of the Sales and Use Tax Regulations.

DATED: July 31, 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.