

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

TSB-H-81(75)S  
Sales Tax  
April 13, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S801203A

On December 3, 1980, a Petition for Advisory Opinion was received from Wm. E. Kugler & Bro., Inc., Junction Road, Lockport, New York 14094.

The issue raised is whether Petitioner's purchases of machinery, equipment, parts, tools and supplies for use in the processing of scrap materials to form standard scrap products for sale are subject to the sales tax imposed under Article 28 of the Tax Law.

Petitioner is engaged in the business of processing scrap metals and scrap paper to produce various standard products acceptable for sale in the scrap trade. The operations performed by Petitioner include such processes as torching, breaking, shearing, sorting, compressing, bundling and baling. Equipment used in these processes include mobile cranes, electro-magnets, torching and cutting equipment, high lifts, shears, balers, in-yard trucks and various handling and sizing equipment.

Section 1115(a)(12) of the Tax Law exempts from the sales tax receipts from the sale of "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 1105-B of the Tax Law provides for the reduction and subsequent elimination of the State sales tax on receipts from sales of parts with a useful life of one year or less, as well as tools and supplies, for use or consumption directly and predominantly in production, as described above. The reduced rate is 2% for the period September 1, 1980 through February 28, 1981. As of March 1, 1981 the rate became 0%.

The Sales and Use Tax Regulations provide the following definitions, applicable herein:

"(b) Manufacturing. Manufacturing is the production of tangible personal property that has a different identity from its ingredients. Manufacturing includes the production of standardized items as well as the production of items to a customer's specifications....

(c) Assembling. Assembling is the coupling or the uniting of parts or materials as a manufacturing process or as a step in the manufacturing process which results in a new product....

(e) Processing. Processing is the performance of any service on tangible personal property which effects a change in the nature, shape or form of the property." 20 NYCRR 531.2

" 'Production' includes the production line of the plant starting with 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."

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JAMES H. TULLY, JR., COMMISSIONER    LOUIS M. JACOBSON, DEPUTY COMMISSIONER  
FRANK J. PUCCIA, DIRECTOR

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20 NYCRR 528.13(b)(1)(ii). "'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...Usage in activities collateral to the actual production process is not deemed to be use directly in production...Machinery or equipment is used predominantly in production, if over 50% of its use is directly in the production phase of a process." 20NYCRR 528.13(c).

In light of the above provisions of the Tax Law and the Sales and Use Tax Regulations, it can be said that Petitioner's described operations come within the exemption set forth in sections 1115(a)(12) and 1105-B of the Tax Law. Accordingly, receipts from sales to Petitioner of machinery, equipment, parts, tools and supplies, for use directly and predominantly in such production of tangible personal property for sale, are not subject to sales tax. In order to make such purchases without the payment of sales tax, Petitioner should present its supplier with a properly completed Exempt Use Certificate (ST-121).

DATED: March 26, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau