

MATERIALS AND INSTALLATION CONTRACTS IN MANUFACTURING PROCESS

Questions have been raised concerning the sales tax treatment of "process piping" and "instrumentation" material (plus related installation contracts) used in a manufacturing operation. Review of these questions involves consideration of the following applicable sections of the Tax Law:

Section 1105(c)(3) of the Tax Law imposes a tax on the service of "Installing tangible personal property, . . . except for installing property which, when installed, will constitute an addition or capital improvement to real property, property or land, as the terms real property, property or land are defined in the Real Property Tax Law. . . ."

Section 1115(a)(12) of the Tax Law provides an exemption from sales and use tax for "Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, . . . for sale, by manufacturing . . . ."

Section 102(12)(f) of the Real Property Tax Law includes within the definition of real property "equipment for the distribution of heat, light, power, gas and liquids" and excludes movable machinery or equipment used for trade or manufacturing and not essential for the support of the building, structure, or superstructure, and removable without material injury thereto.

Based on interpretations by the New York State Board of Equalization and Assessment, which have been communicated to local assessors, if incidental machinery is movable, is not essential for the support of the real property and can be moved without materially injuring the real property, the incidental machinery is exempt from real property tax under paragraph (f).

The following factual situations and determinations are intended to illustrate the sales tax status of both process piping and instrumentation materials, and related installation contracts.

Process Piping and Installation Contract

Fact - The "process piping" is used for the distribution of liquids being processed for sale within the processing plant and a statement from the town assessor confirms that the piping would be assessed as real property under section 102(12)(f) of Real Property Tax Law.

Determination - The contractor's labor charges for installing the process piping are exempt under the capital improvement to real property exception provided by section 1105(c)(3) of the Tax Law, and the materials are exempt as manufacturing machinery and equipment pursuant to section 1115(a)(12) of the Tax Law, based on direct and predominant use in the manufacturing process.

Instrumentation Materials and Installation Contract

Fact - The instrumentation system consists of various components, including valves, gauges and wiring, all of which are integrated elements designed to monitor and control the flow of liquids in the exempt process piping system.

Determination - The instrumentation components became an integral part of the equipment (process piping) used for the distribution of gases or liquids. Such instrumentation could not be removed without material damage to the real property. Consequently, after installation, the instrumentation system is deemed to be real property and the contractor's labor charges to install the instrumentation equipment are considered exempt under the exception provided in section 1105(c)(3) of the Tax Law.

The instrumentation materials are exempt as manufacturing machinery and equipment pursuant to section 1115(a)(12) of the Tax Law, based on direct and predominant use in the manufacturing process.

NOTE: TSB-M-78(4)S Correction - Page 1, paragraph 3, lines 4 and 5 should be corrected to read: "(2) How close, physically and causally, is the disputed item to the finished product?"