

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

TSB-M-92 (8) S
Sales Tax
November 17, 1992

TAXABILITY OF CONCRETE MIXER TRUCKS

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

The Tax Department had held that a concrete mixer truck (as a single piece of equipment) did not qualify for sales tax exemption as production machinery or equipment when used by persons manufacturing and selling transit-mix concrete. Sales tax regulations state that transporting raw materials is an administrative function and not a production activity. Since a concrete mixer truck, by its very nature, is designed for transportation, the Department concluded that a concrete mixer truck was not used directly and predominantly in production. However, notwithstanding this general policy, the Tax Department did allow the sales tax exemption for the mixer component of the truck in certain instances. Since many of these vehicles are built to the specifications of the customer, the vehicle could be designed and sold in components. Usually the components consisted of the chassis, the cab, and the mixer drum. In those instances, a separately stated charge for the mixer component of the vehicle was held to be exempt from sales tax as production machinery or equipment, and the charges for the remaining components were considered taxable, as those portions of the vehicle did not qualify for exemption.

As a result of the Tax Appeals Tribunal decisions in the Matter of the Petition of B.R. DeWitt, Inc. (TSB-D-91(77)S, dated September 19, 1991) and in the Matter of the Petition of Miron Rapid Mix Concrete Corp (TSB-D-92(5)S, dated January 9, 1992) concrete mixer trucks (in their entirety) may qualify for exemption from sales and compensating use taxes as machinery or equipment used in manufacturing. Both B. R. DeWitt, Inc. and Miron Rapid Mix Concrete Corp. were in the business of manufacturing and selling concrete. In its decisions, the Tribunal held that given the manner in which these vendors conducted their business and used these vehicles, the entire mixer truck functioned as a single producing unit and the entire use of the mixer truck was intimately and directly connected to the process of producing concrete for sale. The Tribunal noted that it could find no basis for the Department's approach of applying the production exemption to a concrete mixer truck or a component by component basis.

As a result of these rulings it is now the policy of the Tax Department that concrete mixer trucks (chassis, cab and mixer), that are used directly and predominantly in the production of concrete mix for sale, qualify for exemption from the sales and use tax pursuant to section 1115(a) 12) of the Tax Law.

In addition to the exemption for production machinery and equipment, the Tax Law also provides for an exemption from the sales and use tax for purchases of certain parts, tools and supplies used or consumed directly and predominantly in the production of tangible property for sale, and for the purchase of certain services (installation, maintenance, and repair) performed on exempt production machinery or equipment or such parts, tools or supplies.

With respect to the exemption for parts (which have a useful life of one year or less) tools and supplies used in production, the exemption does not apply to the 4% local sales and use tax imposed within the City of New York. Installation, maintenance, and repair services performed on exempt production machinery and equipment or exempt parts, tools and supplies are not subject to the state portion of the sales tax (4 ¼ % within the Metropolitan Commuter Transportation District [MCTD] and 4% in areas outside the MCTD) but are subject to all local sales and use taxes.

Purchases of parts, tools and supplies used in connection with concrete mixer trucks (which qualify as exempt production equipment) qualify for the exemption stated above. Likewise, installation, maintenance and repair services performed on either exempt mixer trucks or exempt parts, tools or supplies are also exempt from sales and use tax (state portion only). In order to receive the tax exemptions described above the purchaser must present its supplier with a properly completed Exempt Use Certificate (Form ST-121) at the time of purchase.

Section 1115(c) of the Tax Law provides for an exemption from the sales tax for "fuel...for use or consumption directly and exclusively in the production of tangible personal property for sale by manufacturing..." Although, motor fuel and/or diesel motor fuel consumed by exempt concrete mixer trucks is exempt from sales tax as being used in production, such fuel cannot be purchased without the payment of sales tax. Fuel eligible for exemption pursuant to section 1115(c) of the Tax Law must be purchased tax paid and a claim for refund made to the Tax Department. Fuel purchased in New York City for use in an exempt mixer truck is not exempt from the city's 4% local sales and use tax. Accordingly, such fuel purchased in New York City is not eligible for a refund of the local portion of the tax. Furthermore, no refund may be made with respect to any portion of fuel which is consumed by a concrete mixer truck for activities which are not directly in production.

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Persons who purchased property or services of the type described in this memorandum prior to the Tax Tribunal's decisions, in B. R. DeWitt Inc. and Miren Rapid Mix Concrete Corp. and as a consequence, paid sales or use taxes, may obtain a refund of such tax if an Application for Credit or Refund (Form AU-11) is filed with the Tax Department no later than three (3) years from the date the tax was required to be paid over to the Department.

IMPORTANT: Not all concrete mixer trucks qualify as exempt production equipment. Generally, only those businesses engaged in the manufacture and sale of concrete use their mixer trucks in the manner which qualifies for exemption. Contractors who perform capital improvements or who perform maintenance and repair services to real property, are not (and were not, in the past) considered to be making retail sales of concrete mix. Therefore, where the predominant use of a concrete mixer truck is in the performance of these services such vehicle fails to qualify for exemption.

Persons who are not sure if their concrete mixer truck(s) are exempt from sales tax may contact the Tax Department by calling:

Toll free (from New York State only)
From areas outside New York State

1 800 CALL TAX
{518} 438-8581

If you wish to receive a written opinion, address your written request to:

New York State Tax Department
Taxpayer Assistance Bureau
W. A. Harriman State Office Campus
Albany, New York 12227