

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

TSB-A-96 (2) C  
Corporation Tax  
January 8, 1996

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C950824A

On August 24, 1995, a Petition for Advisory Opinion was received from Buffalo Paperboard Corporation, 470 Ohio Street, Lockport, New York 14094.

The issue raised by Petitioner, Buffalo Paperboard Corporation, is whether a "co-generation facility" or a "qualifying facility" which is a "co-generation facility," as these terms are used in section 189.6 of the Tax Law, which is owned and operated by an entity which is also the thermal energy host, is exempt from the tax imposed under section 189 of the Tax Law on the importation of gas services for consumption.

Petitioner is a New York corporation that is principally engaged in the manufacture, distribution and sale of gypsum grade paperboard. In connection with its operations, Petitioner maintains and operates a "qualifying facility" which is a "co-generation facility," as that term is defined by section 201 of the Public Utility Regulatory Policies Act of 1978, at its facilities located in Lockport, New York. The electricity and steam produced by the Petitioner's co-generation facility are also used by Petitioner at its facilities located in Lockport, New York. Consequently, Petitioner states that it is also a thermal energy host within the meaning of section 189.6 of the Tax Law.

In an Advisory Opinion issued to Petitioner dated February 24, 1995, TSB-A-95(3)C, the Commissioner of Taxation and Finance analyzed the application of the exemption provided by section 189.6 of the Tax Law based on a statement of facts that assumed that Petitioner would form a wholly-owned subsidiary corporation, Buffalo Power Corporation, to own the co-generation facility while Petitioner remained the thermal host. Under such facts, it was held that Buffalo Power Corporation would meet the requirements of section 189.6 of the Tax Law and that the portion of natural gas imported into New York State by Buffalo Power Corporation that would be exempt from the tax imposed under section 189 of the Tax Law would be determined by the formula contained in section 189.6.

Section 189 of the Tax Law imposes a tax on every gas importer at the rate of 4 1/4% (plus applicable surcharges) of the consideration given or contracted to be given for gas services imported or caused to be imported into New York State.

Section 189.6 of the Tax Law provides an exemption for gas services imported by a qualifying facility which is a co-generation facility pursuant to section 201 of the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617), and used to generate electricity and/or steam that is used by a thermal energy host located at or near the project site. The portion of natural gas services which is exempt is determined by multiplying the total amount of natural gas used by the co-generation facility by a fraction, the numerator of which is the BTU value of

the steam used by the host plus the BTU value of the electricity used by the host and the denominator of which is the total BTU value of all the useful steam and electricity produced by the co-generation facility.

In this case, Petitioner states that it maintains and operates a qualifying facility which is a co-generation facility, as that term is defined by section 201 of the Public Utility Regulatory Policies Act of 1978, at its facilities located in Lockport, New York and that the electricity and steam produced by the co-generation facility are also used by Petitioner in its paperboard operations at its facilities located in Lockport, New York. Consequently, Petitioner is also a thermal energy host within the meaning of section 189.6 of the Tax Law.

Accordingly, Petitioner will meet the requirements of section 189.6 of the Tax Law and the portion of natural gas imported into New York State by Petitioner's co-generation facility that will be exempt from the tax imposed under section 189 of the Tax Law is determined by the formula contained in such section 189.6 of the Tax Law.

DATED: January 8, 1996

s/DORIS S. BAUMAN  
Director  
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions  
are limited to the facts set forth therein.