

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-02(18)S
Sales Tax
June 26, 2002

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S010126A

On January 26, 2001, the Department of Taxation and Finance received a Petition for Advisory Opinion from DeFoe Corp., 800 South Columbus Avenue, Mt. Vernon, New York, 10550.

The issue raised by Petitioner, DeFoe Corp., is whether the purchase of materials used to construct a temporary steel crossover for an expressway interchange is subject to sales and compensating use tax.

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

Petitioner's contract with the New York State Department of Transportation (NYSDOT) provides for the rehabilitation of the interstate highway interchange between the Bruckner Expressway and the Cross Bronx Expressway. Part of this contract includes a "traffic maintenance plan" that requires that traffic on these roadways continues in an uninterrupted fashion during the construction phase of the rehabilitation project. The traffic maintenance plan calls for the construction of a steel "crossover" between a section of each of the aforementioned roadways to divert vehicular traffic around the portion of the interchange being rehabilitated. Steel beams are installed and a steel deck is laid down to handle the flow of traffic which would normally use the interchange. Once in place, the crossover becomes the property of NYSDOT, as part of the highway, and NYSDOT is responsible for routine maintenance such as snowplowing.

Once the rehabilitation of the interchange is completed, the contract with NYSDOT requires that Petitioner remove the steel crossover, restore the interchange to its original or upgraded configuration, and dispose of the scrap materials. The materials removed by Petitioner do not retain more than scrap value.

Applicable Law and Regulations

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:

* * *

(15) Tangible personal property sold to a contractor, subcontractor or repairman for use in (i) erecting a structure or building (A) of an organization described in subdivision (a) of section eleven hundred sixteen . . . or (ii) adding to, altering or improving real property, property or land (A) of such an organization . . . as the terms real property, property or land are defined in the real property tax law; provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property.

(16) Tangible personal property sold to a contractor, subcontractor or repairman for use in maintaining, servicing or repairing real property, property or land (i) of an organization described in subdivision (a) of section eleven hundred sixteen . . . as the terms real property, property or land are defined in the real property tax law; provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property.

Section 1116(a) of the Tax Law provides, in part:

Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

(1) The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services or property of a kind not ordinarily sold by private persons;

Opinion

The materials purchased by Petitioner which are incorporated into the crossover become an integral component part of the structures to which they are attached. The crossover is functionally a permanent part of the roadway and creates a virtually seamless “detour” for vehicular traffic. The materials become the property of NYSDOT upon their installation and are subsequently maintained by NYSDOT. NYSDOT is a New York State agency described in Section 1116(a)(1) of the Tax Law, and, as such, is an entity exempt from sales tax pursuant to Section 1116 of the Tax Law. Since the materials used to construct the crossover meet the conditions set forth in Sections 1115(a)(15) and (16) of the Tax Law, Petitioner may purchase materials which are incorporated into and become part of the crossover without payment of sales and compensating use tax. Petitioner should provide the supplier of the materials with a properly completed *Contractor Exempt Purchase*

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Certificate, Form ST-120.1, within ninety days of the date of purchase. See Section 1132(c) of the Tax Law.

DATED: June 26, 2002

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Technical Services Division

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