

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

TSB-A-81(34)S
Sales Tax
October 19, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810309A

On March 9, 1981 a Petition for Advisory Opinion was received from Cummins Engine Co., Inc., Jamestown Engine Plant, 4720 Baker St. Extension, Lakewood, New York 14750.

The issue raised is whether or not machine filter systems are subject to sales tax.

Petitioner is engaged in the manufacture of diesel engines for sale. As part of its production process, Petitioner uses a central filtration and cooling system in conjunction with certain machinery and equipment.

The central filtration and cooling system is necessary to:

1. Meet cutting parameters of tooling,
2. Meet the precision characteristics of piece parts which are components of Petitioner's diesel engines,
3. Meet the safety and environmental restrictions of both State and Federal Laws,
4. Collect and reclaim the metal chips with a resale value of \$1,140,000 a year,
5. Reclaim natural resources (metals),
6. Retard machine wear of metal moving parts.

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

The Sales and Use Tax Regulations state, in relevant part, as follows: "Machinery and equipment used for disposing of industrial waste, as a part of a process for preventing water or air pollution, will be considered as being used directly and predominantly in production by manufacturing . . . if

- (i) the machinery and equipment is purchased by a manufacturer and used predominantly to actually treat, bury, or store waste materials from a production process and
- (ii) over fifty percent of the waste treated, buried or stored results from the production process." 20 NYCRR 528.13(d)(1).

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As Petitioner uses the filter system to remove metal chips from the air, such equipment is being used to prevent air pollution within the meaning and intent of Regulation 528.13(d).

Also, the use of the system to reclaim chips, which are sold, constitutes the production of tangible personal property for sale pursuant to section 1115(a)(12) of the Tax Law.

Accordingly, Petitioner's purchase of a filter system qualifies for the exemption provided by section 1115(a)(12) of the Tax Law and Regulation 528.13(d). Petitioner may claim exemption on such purchases by issuing a properly completed Exempt Use Certificate (Form ST-121) to its supplier.

DATED: September 29, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau