

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

TSB-A-81(43)S
Sales Tax
November 2, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810616B

On June 16, 1981 a Petition for Advisory Opinion was received from Frazer & Jones Co., Division of Eastern Co., 300 Milton Avenue, Syracuse, New York 13221.

The issue raised is whether or not a mold-making machine and the energy used to operate it are exempt from sales tax.

Petitioner is a manufacturer of mine roof supports, also know as expansion supports. These expansion supports are used to secure metal shields that support mine ceilings and may be analogized to the small plastic expanders used by homeowners for securing fixtures in sheetrock. The expansion supports are produced by a foundry process that involves the pouring of molten metal into sand molds. The cores, and the molds they are used to produce, being made of sand are fragile and must be handled with care. Also, since no products can be molded in Petitioner's foundry without the use of these cores and molds and an ample supply must be assured, it is not feasible for Petitioner to purchase these items from outside suppliers. Petitioner, therefore, contends that the machinery to produce these cores and molds, as well as the utilities to operate this machinery are exempt from sales tax pursuant to the provisions of section 1115(a)(12) of the Sales Tax Law.

Section 1115(a)(12) of the Tax Law exempts from tax: "Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property . . . for sale, by manufacturing . . .". The Tax Law also provides a similar exemption from local taxes, except the tax imposed within New York City. Tax Law §§ 1107 and 1210(a).

The Sales and Use Tax Regulations provide that: "'Directly' means the machinery or equipment must, during the production phase of a process,

- (i) act upon or effect a change in material to form the product to be sold, or
- (ii) have an active causal relationship in the production of the product to be sold, or
- (iii) be used in the handling, storage, or conveyance of materials or the product to be sold, or
- (iv) be used to place the product to be sold in the package in which it will enter the stream of commerce." 20 NYCRR 528.13(c)(1).

The Regulations further state that: "Machinery or equipment is used predominantly in production, if over 50% of its use is directly in the production phase of a process." 20 NYCRR 528.13(c)(4).

Section 1115(c) of the Tax Law exempts from tax: "Fuel, gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature for use or consumption directly and exclusively in the production of tangible personal property . . . by manufacturing . . .". A similar exemption is also applicable to local taxes, except the tax imposed within New York City. Tax Law §§ 1107 and 1210(a).

The terms "directly and exclusively" are defined in the Regulations as follows: "(1) 'Directly' means the fuel, gas, electricity, refrigeration and steam and like services, must during the production phase of a process, either:

- (i) operate exempt production machinery or equipment, or
 - (ii) create conditions necessary for production, or
 - (iii) perform an actual part of the production process.
- (3)(i) 'Exclusively' means that the fuel, gas, electricity, refrigeration and steam and the like services are used in total (100%) in the production process." 20 NYCRR 528.22(c).

The Regulations further provide that: "'Production' includes the production line of the plant starting with handling and storage of raw materials at the plant site and continuing through the last step of production where the product is finished and packaged for sale." 20 NYCRR 528.13(b).

Mold and core-making machines are machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property for sale within the meaning and intent of section 1115(a)(12) of the Tax Law.

Accordingly, Petitioner's mold-making machines used to produce sand molds and cores for the foundry operation are machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property for sale, by manufacturing, and purchases of such machines are, therefore, exempt from statewide and local taxes, except the New York City tax. Tax Law §§ 1115(a)(12), 1107 and 1210(a). Similarly, the energy used to operate the mold-making machine is used directly and exclusively in production and the purchase of such energy is also exempt from statewide and local taxes, except the New York City tax. Tax Law §§ 1115(c), 1107 and 1210(a).

DATED: October 14, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau