

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

TSB-A-81(62)S
Sales Tax
December 8, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810527B

On May 27, 1981 a Petition for Advisory Opinion was received from World Display Fixtures Corporation, 458 East 101st Street, Brooklyn, New York 11236.

Petitioner requests clarification of the application of the State and New York City sales taxes to the purchase of tools, supplies and welding gases used in a manufacturing process.

Petitioner is a New York City manufacturer of metal and wood store display fixtures. Petitioner purchases tools, supplies and cylinders of welding gases, which are used in its manufacturing process.

Section 1105(a) of the Tax Law, contained in Article 28, imposes the State sales tax of four per cent on the "receipts from every retail sale of tangible personal property, except as otherwise provided in this article." Section 1107(a) of the Tax Law imposes an additional four per cent sales tax applicable within the territorial limits of New York City.

Section 1115(a)(12) of the Tax Law provides an exemption with respect to "Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, . . . for sale, by manufacturing. . . , but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus." This exemption is applicable to the State sales tax imposed under section 1105(a) of the Tax Law, but not to the New York City sales tax imposed under section 1107(a) of the Tax Law.

In 1979 a new Section 1105-B was added to the Tax Law to provide for a reduction and subsequent exemption from the State, but not the New York City, sales tax on receipts from the retail sale of "parts with a useful life of one year or less, tools and supplies for use or consumption directly and predominantly in the production of tangible personal property, . . . for sale, by manufacturing. . . ." Tax Law, §1105-B(a). The tax rate was reduced to 2% for the period September 1, 1980 through February 28, 1981, and receipts from the sale of the described property were rendered exempt as of March 1, 1981.

The language employed in the statutory provisions quoted above is clarified in the Sales and Use Tax Regulations promulgated by the State Tax Commission. Thus, it is there provided 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)(4).

It is further provided the "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).

"Production" is stated to include "the production line of the plant starting with the 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)(1)(ii).

The term "part" means "a replacement for any portion of a machine or piece of equipment, and any device actually attached to the machinery or equipment and used in connection with the performance of its function." 20 NYCRR 528.13(e)(1)(i). The term "tool" means a "manually operated implement for performing a task," and the term "supply" means "an item of tangible personal property used in the maintenance of machinery or equipment and an item of tangible personal property used or consumed in production, whose use is incidental to such production, or which is expendable." 20 NYCRR 528.13(e)(2) & (3)

Section 1115(c) of the Tax Law provides for an exemption with respect to gases used or consumed directly and exclusively in the production of tangible personal property, for sale, by manufacturing. This exemption is applicable to the State sales tax imposed under section 1105(a) of the Tax Law, but not to the New York City sales tax imposed under section 1107(a) of the Tax Law.

Accordingly Petitioner's purchases of tools and supplies used or consumed directly and predominantly in the production of tangible personal property for sale were subject to both State and New York City 4% sales taxes where purchased prior to September 1, 1980; were subject to a 2% State sales tax and the 4% New York City sales tax where purchased during the period September 1, 1980 through February 28, 1981; and are exempt from the State sales tax, but remain subject to the 4% New York City sales tax, where purchased subsequent to February 28, 1981. Petitioner's purchases of welding gases, where the same are for direct and exclusive use or consumption in the manufacture of tangible personal property for sale, are and were at all times exempt from the State sales tax imposed under Section 1105(a) of the Tax Law, but were subject to the New York City sales tax imposed under Section 1107(a) of the Tax Law.

DATED: November 23, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau