

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

TSB-A-87(28)S
Sales Tax
August 31, 1987

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S870403A

On April 3, 1987, a Petition for Advisory Opinion was received from C & H Salvage Corp., Route 207, Campbell Hall, New York 10916.

The issue raised is whether the purchase of machinery used strictly in the recycling of scrap metals and materials is taxable.

Section 1105(a) of the Tax Law imposes a sales tax upon "[t]he receipts from every sale of tangible personal property, except as otherwise provided in this article."

Section 1115(a)(12) of the Tax Law exempts "[m]achinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, . . . for sale . . . by manufacturing, processing. . . ." (Emphasis supplied).

Regulation section 528.13(c)(1) provides 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.

Additionally, regulation section 528.13(b) provides that the section 1115(a)(12) exemption applies only to machinery and equipment used directly and predominantly in the production phase. Machinery and equipment predominantly used in administration or distribution does not qualify for exemption. Regulation section 528.13(b) provides:

- (i) Administration includes activities such as sales promotion, general office work, credit and collection, purchasing, maintenance, transporting, receiving and testing of raw materials and clerical work in production such as preparation of work, production and time records.

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- (ii) Production includes 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.
- (iii) Distribution includes all operations subsequent to production, such as storing, displaying, selling, loading and shipping finished products.

A person engaged in the processing of scrap metal for sale is engaged in "processing" within the meaning of section 1115(a)(12) of the Tax Law. Hydraulic guillotines, alligator sheers, baling presses, turnings crushers and special devices for breaking scrap to change its condition from unusable to usable materials for remelting purposes qualify as being used directly and predominantly in production.

However, not all machinery purchased by a scrap metal processor qualify as machinery used directly in processing. For example, machinery such as cranes used to unload scrap from a truck and to place such scrap into storage is not considered directly used in production. Also, machinery used to convey a finished bale of scrap metal from the point where its production is completed to a truck for transportation to the customer is not considered as being used directly in production.

DATED: August 31, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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