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

TSB-A-91 (24)S
Sales Tax
March 7, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. S901121G

On November 21, 1990 a Petition for Advisory Opinion was received from Bancker Construction Corp., 218 Blydenburgh Road, P.O. Box N, Central Islip, N.Y. 11722.

The issue raised by Petitioner, Bancker Construction Corp., is whether certain machinery and equipment purchased by Petitioner and used in constructing and installing a gas pipeline system and an electrical distribution system for a utility qualifies for exemption from sales tax pursuant to Section 1115(a)(12) of the Tax Law.

Petitioner has a contract to assist Long Island Lighting Company (LILCO) in supplying machinery, equipment and labor in order to install a gas pipeline and an electrical distribution grid in LILCO'S service area. The gas in this pipeline will be coming from Canada and will be reconditioned and distributed by LILCO to consumers in Queens, Nassau and Suffolk Counties. In order to perform the work specified in the contract with LILCO, Petitioner was required to purchase heavy cranes to set the pipe in place for the gas and electrical transmission systems.

Section 1115 of the Tax Law states, in part:

> (a) 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: (12) Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, gas. . .for sale by manufacturing, processing. . .refining, mining or extracting. . . . This exemption shall include all pipe, pipeline, drilling rigs, service rigs, vehicles and associated equipment used in the drilling, production and operation of oil, gas and solution mining activities to the point of sale to the first commercial purchaser. . . . (Emphasis supplied)

Section 528.13(b)(2) of the Sales and Use Tax Regulations states that,

> The exemption applies only to machinery and equipment used directly and predominantly in the production phase. Machinery and equipment partly used in the administration and distribution phases does not qualify for the exemption, unless it is used directly and predominantly in the production phase.

The exemption provided for the production of oil, gas and solution mining activities is limited to the point of sale to the first commercial purchaser in accordance with Section 1115(a)(12) of the Tax Law. Thus, any exemption allowed to LILCO or its subcontractors would be limited to any equipment used by the extractor of the gas etc., up to the point at which his first sale occurs. LILCO does not produce gas. Therefore, neither it or its subcontractors are entitled to any exemption for its production pursuant to said Section.

Further, only equipment used in the generation of electricity may qualify for the exemption provided under Section 1115(a)(12) of the Tax Law. Equipment used by LILCO to distribute electricity does not qualify for the exemption pursuant to Section 528.13(b)(2) of the Sales and Use Tax Regulations. Machinery and equipment used to install gas and electrical systems does not qualify for any exemption from sales tax regardless of the tax status of the systems being installed.

Accordingly, Petitioner is not entitled to any sales tax exemption on the purchase of equipment that will be used to construct and install a gas pipeline system and an electrical distribution system for LILCO.

DATED: March 7, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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