

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

TSB-A-96 (51)S  
Sales Tax  
September 4, 1996

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S951113D

On November 13, 1995, a Petition for Advisory Opinion was received from Finch, Pruyn & Co., Inc., 1 Glen Street, Glens Falls, New York 12801.

The issue raised is whether electricity consumed directly and exclusively for maintaining a continuously controlled environment necessary to prevent electrical component failure in manufacturing equipment is exempt from sales tax.

Petitioner presents the following facts.

Petitioner operates a fully integrated paper mill which manufactures fine paper. The manufacturing process for fine paper begins with the debarking of logs. The logs are then reduced into wood chips, which are then fed into a digester. The digester cooks the chips under high pressure and chemical processing to produce fiber which is then bleached. The fiber is then mixed with certain chemicals and dried on a machine to produce paper. Throughout the paper manufacturing process a controlled environment must exist in each of the various stages of production. This is achieved through the use of steam heat and water.

In order to maintain the operation of the manufacturing equipment, which is subject to high temperatures (80 to 115 degrees Fahrenheit) and humidity, Motor Control Centers (MCCs) are utilized throughout the manufacturing facility. These MCCs are separated individual windowless control rooms built solely to house the electrical components of the manufacturing production line equipment including switches, relays and starters. Within the MCCs these electrical components are kept in a cool low humidity controlled environment in order to function. If these electrical components were not properly housed in the MCCs they would be subject to high heat and humidity which would cause the components to short circuit and corrode resulting in a shut down of production. Employee access or use of the rooms is restricted to maintenance and service functions only.

The MCCs are kept cool (approx. 70 to 75 degrees Fahrenheit) and humidity free by air conditioners that operate continuously during the manufacturing process. The MCCs only functional purpose is to maintain a controlled environment, as prescribed by the equipment manufacturer and mandated by local jurisdiction fire code, in order to prevent electrical component failure for the manufacturing process to operate and to avoid any fire hazards. The MCCs are controlled environments only accessible to employees during maintenance of the electric components or as a safety measure to disrupt power to production line equipment during service.

The MCCs have dedicated heating, ventilation, and air conditioning systems (HVAC). These dedicated HVAC are controlled and monitored separately in order to maintain

the necessary controlled environment conducive for the manufacturing machinery to operate. Similarly, the electricity usage for HVAC operations is metered separately.

Section 1115(a) of the Tax Law states, in part:

Exemptions from sales and use taxes. (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...for sale by manufacturing, processing, generating,...,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 ....

Section 1115(c) of the Tax Law exempts from taxation purchases of "fuel, gas, electricity...for use or consumption directly and exclusively in the production of tangible personal property...for sale".

Section 528.22 of the Sales and Use Tax Regulations elaborate on the statutory exemption provision above, as follows:

(c) Directly and exclusively. (1) "Directly" means the fuel, gas, electricity...must during the production phase of a process, either:

- (i) operate exempt 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...are used in total (100%) in the production process.

In this case, Petitioner's dedicated heating, ventilating and air conditioning systems (HVAC) are necessary to maintain specific environmental conditions within the MCCs for the protection of various electrical components of the manufacturing production line equipment including switches, relays and starters. The electrical components of manufacturing equipment which are directly wired to such equipment, and the MCCs which are designed solely to house these electrical components, are considered to assume the identity of the machinery and equipment and are entitled to the same exemption afforded the machinery and equipment. (See Leprino Foods Company, Adv. Op. Comm. of Taxation and Finance, April 28, 1994, TSB-A-94(17)S.)

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Accordingly, where the machinery and equipment are used directly and predominantly in producing tangible personal property for sale, Petitioner's purchases of electrical energy used directly and exclusively to run the dedicated HVAC systems within the MCCs will qualify for the exemption from tax provided under Section 1115(c) of the Tax Law and Section 528.22 of the Sales and Use Tax Regulations.

DATED: September 4, 1996

/s/  
John W. Bartlett  
Deputy Director  
Technical Services Bureau

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