

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

TSB-H-81(68)S
Sales Tax
April 3, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S801205A

On December 5, 1980 a Petition for Advisory Opinion was received from Frontier Chemical Waste Process, Inc., 4626 Royal Avenue, Niagara Falls, New York 14303.

The issue raised is whether Petitioner's purchases of machinery, equipment and supplies used in the transportation, treatment and disposal of chemical waste are subject to sales tax. Petitioner contends that Section 528.13(d) of the Sales and Use Tax Regulations provides the basis for exempting such purchases.

Petitioner is engaged in the business of the transportation, treatment and disposal of hazardous chemical wastes for various industrial and commercial customers. Waste material is transported by Petitioner from its customers' places of business to Petitioner's processing site, where it is treated for disposal. Petitioner does not produce tangible personal property for sale.

Section 1115(a)(12) of the Tax Law exempts from sales tax the receipts from the sale of "Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property...for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting...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." However, Section 1105-B of the Tax Law provides for the reduction and subsequent elimination of State sales tax on receipts from sales of parts with a useful life of one year or less, as well as tools and supplies, for use or consumption directly and predominantly in production, as described above.

The Sales and Use Tax Regulations provide the following definitions, applicable herein: "'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)(1)(ii). "'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....Usage in activities collateral to the actual production process is not deemed to be use directly in production." 20 NYCRR 528.13(c).

The Sales and Use Tax Regulations treat the subject of waste treatment equipment as follows: "Machinery and equipment used for disposing of industrial waste, as a part of a process for preventing water or air pollution, will be considered as being used directly and predominantly in production by manufacturing, processing, generating, assembling, refining, mining or extracting if: (i) the machinery and equipment is purchased by a manufacturer and used predominantly to actually treat, bury, or store waste materials from a production process, and (ii) over fifty percent of the waste treated, buried or stored results from the production process." (Emphasis added). 20 NYCRR 528.13(d)(1).

JAMES H. TULLY, JR., COMMISSIONER LOUIS M. JACOBSON, DEPUTY COMMISSIONER
FRANK J. PUCCIA, DIRECTOR

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Inasmuch as Petitioner is not engaged, either directly or as a subcontractor, in the production of tangible personal property for sale it is not a manufacturer within the meaning and intent of 20 NYCRR 528.13(d). Consequently, the machinery, equipment and supplies at issue herein do not constitute machinery, equipment and supplies used in production, and the receipts from the retail sale thereof to Petitioner do not qualify for the exemption from sales tax provided under sections 1115(a)(12) and 1105-B of the Tax Law.

DATED: March 18, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau