

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

TSB-A-95 (3) C
 Corporation Tax
 February 24, 1995

STATE OF NEW YORK
 COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C941031C

On October 31, 1994, a Petition for Advisory Opinion was received from Buffalo Paperboard Corporation, 470 Ohio Street, Lockport, New York 14094.

The issue raised by Petitioner, Buffalo Paperboard Corporation, is whether a co-generator, Buffalo Power Corporation, would be exempt from the tax imposed under section 189 of the Tax Law on the purchase of imported natural gas.

Buffalo Power Corporation would be a qualified co-generation facility under section 201 of the Public Utility Regulatory Policies Act of 1978 in that: (1) the facility is a topping cycle co-generation facility; (2) the useful thermal energy output will exceed 15% of output; and (3) the useful power output plus one-half of the useful thermal output will be no less than 42.5% of the total energy input.

The total energy input would be distributed as follows, producing a total of 44.9% useful power output plus 1/2 of the useful thermal output:

9.1%	Boiler Losses	---
82.5%	Thermal Output Process Steam X 1/2 =	41.2%
3.7%	Electric Power X 1 =	3.7%
4.7%	Electric Turbine Losses	---
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100%	Totals	44.9%

Buffalo Power Corporation will be a wholly owned subsidiary of its thermal energy host, Petitioner, located on the same premises.

Buffalo Power Corporation will sell steam and electricity to Petitioner. Petitioner will use both steam and electric power in production. Some of the thermal energy (steam) will drive a shaft turbine which will produce power. However, that power generation will be done by Petitioner, the host, and will be considered part of the production process.

Section 189 of the Tax Law imposes a tax on every gas importer at the rate of 4 1/4% (plus applicable surcharges) of the consideration given or contracted to be given for gas services imported or caused to be imported into New York State.

Section 189.6 of the Tax Law provides that a portion of gas services imported by a co-generation facility, as defined in section 2.2-a of the Public Service Law or a qualifying facility which is a co-generation facility pursuant to section 201 of the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617), and used to generate electricity and/or steam produced by such facility when such electricity and/or steam is supplied and used by a thermal energy host located at

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or near the project site shall be exempt. The portion of natural gas services which is exempt is determined by multiplying the total amount of natural gas used by such facility by a fraction, the numerator of which is the BTU value of the steam used by such host plus the BTU value of the electricity used by such host and the denominator of which is the total BTU value of all the useful steam and electricity produced by the facility.

Herein, Petitioner states that Buffalo Power Corporation will be a qualifying co-generation facility pursuant to section 201 of the Public Utility Regulatory Policies Act of 1978. Buffalo Power Corporation will generate electricity and steam which will be supplied to and used by Petitioner, a thermal energy host located on the same premises. Accordingly, Buffalo Power Corporation will meet the requirements of section 189.6 of the Tax Law and the portion of natural gas imported into New York State by Buffalo Power Corporation that will be exempt from the tax imposed under section 189 of the Tax Law is determined by the formula contained in such section 189.6 of the Tax Law.

DATED: February 24, 1995

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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