

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). Petitioner asks whether its purchase of a service contract for production equipment—a generator that produces electricity consumed directly and predominantly in manufacturing tangible personal property for sale—is exempt from New York State and local sales tax (sales tax or tax). We conclude that the purchase of a service plan for exempt production equipment is also exempt from tax.

**Facts**

Petitioner manufactures and sells plastic packaging. Petitioner generates most of the electricity used to power its manufacturing equipment on-site using a solar array and a generator. Petitioner also purchases some utilities—primarily for nonmanufacturing activities—from a local utility company.

Petitioner determined that its generator qualified for the exemption from sales tax for production equipment because it generates electricity used directly and predominantly to power equipment that is used directly and predominantly to manufacture tangible personal property—plastic packaging—for sale.<sup>1</sup> Petitioner also purchased from the company that sold and installed the generator a factory protection plan that covers repairs to and maintenance of the generator. The plan does not cover or include any other property or equipment at Petitioner’s facility.

Petitioner asks only whether the purchase of the service plan for the generator is exempt from sales tax.

**Analysis**

Sales tax is imposed on the receipts from sales of enumerated services except as otherwise specifically provided. *See* Tax Law § 1105(c). Maintaining, servicing or repairing tangible personal property are generally taxable services. *See* Tax Law § 1105(c)(3). Sales of maintenance, service and repair contracts for tangible personal property are likewise also generally taxable. *See* 20 NYCRR 527.5(d).

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<sup>1</sup>This Advisory Opinion accepts without deciding Petitioner’s determinations and assertions of fact that: (1) Petitioner’s manufacturing equipment is exempt production equipment for purposes of Tax Law § 1115(a)(12) and (2) the electricity generated by the generator is used directly and predominantly to power Petitioner’s exempt production equipment such that the generator is also exempt production equipment (*See, e.g.,* TSB-A-16[25]S). This Advisory Opinion does not decide and the Department is not bound by these assertions of fact.

Tax Law § 1105-B(b) provides a sales tax exemption for sales of the services of maintaining, servicing or repairing tangible personal property described in Tax Law 1115(a)(12). Tax Law § 1115(a)(12) describes, and provides an exemption for, as relevant here, machinery or equipment used directly and predominantly in the production of tangible personal property for sale by manufacturing (exempt production equipment).

Thus, while services to tangible personal property, including service plans, are generally subject to sales tax, Tax Law § 1105-B(b) exempts from tax services to exempt production equipment. Likewise, a service plan that relates solely to the maintenance and repair of exempt production equipment is exempt. *See* TSB-A-13(9)S (exempting from tax repair and replacement warranties related solely to solar equipment that qualified for exemption pursuant to Tax Law §§ 1115[a][12] & 1105-B).

Petitioner's purchase of the service plan would qualify for exemption pursuant to Tax Law § 1105-B(b) if it is purchased to service exempt production equipment. The plan was purchased to maintain and repair a generator that Petitioner avers is exempt production equipment because it is used directly and predominantly in the production of tangible personal property for sale. Assuming the generator is, in fact, exempt production equipment, the plan that Petitioner purchased—solely for the repair and maintenance of that generator—would be exempt from sales tax pursuant to Tax Law § 1105-B(b).

DATED: November 24, 2020

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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.