

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

TSB-A-81 (27) S  
Sales Tax  
September 24, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810505B

On May 5, 1981 a Petition for Advisory Opinion was received from Gilford Construction Corporation, 1818 Gilford Avenue, New Hyde Park, New York 11040.

The issues raised are: (1) whether replacement parts, equipment, belts, and the like used in manufacturing ready-mix concrete are exempt from sales tax, and (2) whether trucks hired by Petitioner to deliver ready-mix concrete are subject to tax.

Petitioner operates a ready-mix concrete manufacturing plant where cement, sand, stone or gravel, and water are placed in mixing tanks mounted on truck chassis and mixed to form the finished product. Petitioner delivers this material and collects tax from its customers. At times, Petitioner must hire additional trucks to deliver finished concrete to the ultimate customer.

Section 1115(a)(12) of the Tax Law exempts from tax: "Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property by manufacturing, processing 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 1105-B of the Tax Law provides a phase-out of the statewide tax on purchases of certain parts, tools, supplies and services to tangible personal property used or consumed in production. Subdivision (a) of such section states: ". . . receipts from the retail sales of parts with a useful life of one year or less, tools and supplies for use or consumption directly and predominantly in the production of tangible personal property . . . for sale by manufacturing, processing . . . shall be exempt from such tax on and after March first, nineteen hundred eighty-one." Similarly, Section 1105-B provides that with respect to purchases of such items and services made between September 1, 1980 and February 28, 1981, the statewide tax shall be two per cent. The tax imposed within the City of New York is not affected by this phase-out and taxes imposed by other localities on services to exempt tangible personal property remain imposed.

Section 1105(a) of the Sales Tax Law imposes a tax on: "The receipts from every retail sales of tangible personal property . . .".

Section 1101(b)(5) of the Sales Tax Law defines a sale as: "Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, in any manner for a consideration, . . ."

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The vehicles in question consist of a truck chassis with a mixing unit mounted thereon. The mixing unit qualifies for the production exemption provided in Section 1115(a)(12) of the Tax Law; however, such exemption is not applicable to the truck chassis and its components (motor, transmission, etc.)

Accordingly, Petitioner's purchases of replacement parts, equipment, belts etc. for the mixing unit which is used directly and predominantly in the production of ready-mixed concrete by manufacturing are exempt from local taxes other than the New York City tax and, effective March 1, 1981, are also exempt from the statewide sales and use tax. For the period from September 1, 1980 through February 28, 1981, such purchases were exempt from local taxes (except the New York City tax) but subject to the statewide tax at the rate of two per cent. However, purchases of similar replacement parts for use in the truck chassis and its components (motor, transmission, etc.) are not used directly and predominantly in production and are thus subject to tax.

In addition, the rental of trucks by Petitioner to deliver ready-mix concrete to customers is subject to tax. When the trucks are provided to Petitioner with a driver and the vendor's billing shows a separately stated charge for the services of the driver, such amount is not subject to tax, if it is reasonable in relation to prevailing wage rates for drivers. Also, if the billing for the truck rental is further segregated to a charge for the truck and a charge for the mixing unit and such amounts are reasonable in relation to the purchase price of each, the rental charge applicable to mixing unit would be exempt provided a properly completed Exempt Use Certificate (Form ST-121) is furnished to the lessor. The portion of the rental charge applicable to the truck is taxable and, pursuant to the Sales and Use Tax Regulations, provided the lessor pays all vehicle registration fees and all vehicle insurance, tax is due on eighty two per cent (ninety per cent within New York City) of such rental charge. 20 NYCRR 530.4.

DATED: August 26, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau