

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

TSB-A-81(39)S
Sales Tax
October 23, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810728C

On July 28, 1981 a Petition for Advisory Opinion was received from the F.G. Compagni Construction Company, Inc., 182 Port Washington Street, Cortland, N.Y. 13045.

The issue raised is whether the purchase of dynamite and dynamite caps to be used for blasting purposes by a construction company is subject to sales tax.

Petitioner, a construction company, is engaged in capital improvement contracts with exempt organizations.

Petitioner contends that dynamite and accessories which are used in connection with site preparation are totally incorporated into the job and that, because this material is consumed in a project for an exempt organization, Petitioner should not be liable for tax when purchasing such material.

Section 1105(a) of the Tax Law, imposes a tax on: "The receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

The term "retail sale" is defined in section 1101(b)(4) of the Tax Law to include:

"a sale of any tangible personal property to a contractor, subcontractor or repairman for use or consumption in erecting structures or buildings, or building on, or otherwise adding to, altering, improving, maintaining, servicing or repairing real property, property or land, as the terms real property, property or land are defined in the real property tax law, is deemed to be a retail sale, regardless of whether the tangible personal property is to be resold as such before it is so used or consumed."

Section 1115(a)(15) of the Tax Law grants an exemption from tax for materials purchased by a contractor, subcontractor or repairman for use in erecting a structure or building of an exempt organization, as defined in section eleven hundred sixteen of the Tax Law. However, "no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property. (Emphasis Added) Tax Law §1115(a)(15).

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The dynamite and accessories used by Petitioner in its construction business do not become an integral component part of any structure, building or real property but rather are consumed during the construction process. Accordingly, no exemption is available to Petitioner with respect to purchases of these materials.

DATED: October 7, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau