

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

TSB-A-81(51)S
Sales Tax
November 17, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810210A

On February 10, 1981 a Petition for Advisory Opinion was received from Spence Engineering Co., Inc., 150 Coldenham Road, Walden, New York 12586.

The issue raised is whether Petitioner's purchase of computer system for use in billing, accounts payable, control of inventory and production is subject to State or local sales taxes.

Petitioner is engaged in manufacturing automatic temperature and pressure regulating valves for sale. Petitioner estimates that 60% of the computer use will be for the routing of Petitioner's product through the various stages of manufacturing. To accomplish this, Petitioner's manufacturing employees will use various computer stations to record the start and finish of each operation performed on the product. This will expedite the routing of the product through the various production activities in each manufacturing department. The computer will produce shortage reports and will record rejections, thus enabling Petitioner to make the necessary adjustments to the production flow. The remaining 40% of computer use will be for inventory control, order entry, accounts receivable, accounts payable and similar accounting functions.

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." An exemption from such tax is provided with respect to "Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, . . . for sale, by manufacturing, processing . . ." Tax Law, § 1115(a)(12).

The Sales and Use Tax Regulations provide that "Machinery or equipment is used predominantly in production, if over 50% of its use is directly in the production phase of a process." 20 NYCRR 528.13(c)(4). The Regulations also define "directly" to mean "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." 20 NYCRR 528.13(c)(1).

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The Regulations further state that: "Usage in activities collateral to the actual production process is not deemed to be used directly in production." 20 NYCRR 528.13(c) (2).

The recording of the start and finish of each operation performed on a product is an activity which is collateral to the actual production process and does not have an active causal relationship in the production of the product.

Accordingly, as the computer will not be used "directly" in Petitioner's manufacturing process, as defined in Section 528.13(c) of the Regulations, Petitioner's purchase of the computer system at issue will be subject to State and local sales tax.

DATED: October 29, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau