

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

TSB-A-82(45)S
Sales Tax
December 22, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S820315B

On March 15, 1982 a Petition for Advisory Opinion was received from Switzer Contracting, Inc., 8 South 18th Street, Wyandanch, New York 11798.

The issue raised is whether Petitioner is liable for New York State and local sales tax on the purchase of materials used to repave roads and real property owned by the State of New York and/or municipal governments.

Petitioner is a road paving contractor which performs subcontract work for the Long Island Lighting Company. This work involves repaving sections of New York State and municipal government roads and real property which have been excavated by the Long Island Lighting Company for the purpose of the installation, replacement or repair of electrical lines and/or gas mains or pipes.

Section 1105(a) of the Tax Law imposes the State sales tax on the receipts from retail sales of tangible personal property. Section 1115 of the Tax Law exempts from the operation of such tax receipts from the purchase of tangible personal property sold to a contractor, subcontractor or repairman for use in maintaining, servicing or repairing the real property of any of certain exempt entities, or for use in adding to, altering or improving the real property of such an exempt entity, where the tangible personal property in question is to become an integral component part of such real property. Tax Law, §1115(a)(15) and (16). The exempt entities here referred to include the State of New York and any of its agencies, instrumentalities, public corporations, or political subdivisions, including municipalities. Tax Law, §1116(a)(1). The foregoing provisions are equally applicable to local sales taxes.

Accordingly, since Petitioner will be repairing or making capital improvements to real property belonging to an exempt entity described in the above-cited exemption provision, its purchases of the materials to be used in paving the roads, and which become an integral component part thereof, may be purchased without the payment of tax. Olympia & York Battery Park Co., Advisory Opinion, January 13, 1982, TSB-A-82(5)S.

In order to avail itself of the benefits of the above-cited exemption provision, Petitioner should present its supplier with a properly completed Contractor Exempt Purchase Certificate, Form ST-120.1. If Petitioner holds a Direct Payment Permit (Form ST-123) it may, instead, simply issue its supplier a copy of such permit.

DATED: December 2, 1982

s/FRANK J. PUCCIA
Director
Technical Services Bureau