

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

TSB-A-89 (46)S
Sales Tax
November 20, 1989

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S890717A

On July 17, 1989, a Petition for Advisory Opinion was received from Salomon, Inc., 1221 Avenue of the Americas, New York N.Y.

The issue raised is whether purchases of tangible personal property by contractors or subcontractors, for use in constructing improvements to real property at 7 World Trade Center, New York, New York owned by Port Authority of New York and New Jersey, (hereinafter referred to as Port Authority) which is exempt from New York State and Local Sales and Use Tax under Tax Law Section 1116(a)(1), are exempt from such sales and use tax under Tax Law Section 1115(a)(15), where such tangible personal property will be incorporated into such real property pursuant to a lease agreement between Petitioner, Salomon, Inc., and 7 World Trade Company.

Petitioner entered into a lease dated November 23, 1988 with the 7 World Trade Company to lease office space in the building known as 7 World Trade Center. The lease is to commence on October 1, 1990 and end September 30, 2010. Under the terms of the lease, Petitioner received a license to commence work on November 23, 1988. Pursuant to a lease dated December 31, 1980, the land upon which 7 World Trade Center has been constructed is leased from the Port Authority to 7 World Trade Company.

Section 4.12 of the December 31, 1980 lease states, "Legal title to the Tower building construction, including improvements, appurtenances and fixtures shall vest in the Port Authority immediately upon erection or affixation of all or any part on or to the premises."

Section 15.01 of the November 23, 1988 lease between Petitioner and 7 World Trade Company states, in part: "Landlord's Property. All Initial Work and Alterations, other than Tenant's Property, shall be deemed the property of Landlord and shall be surrendered to Landlord upon expiration or sooner termination of the Term, subject to Tenant's restoration obligations set forth in Section 15.03. The preceding sentence shall in no way restrict or limit Tenant's right to perform Initial Work and Alterations (including without limitation, the modification or alteration of previous installations made by Tenant) pursuant to Exhibit B and Article 14, respectively. ..."

Section 15.02 of such lease states, in part: "Tenant's Property. All movable partitions, special cabinet work, other business and trade fixtures, machinery and equipment, communications equipment and office equipment which can be removed without jeopardizing the structural integrity of the Building or irreparable damage to, or adverse affect upon, the Building systems, and all furniture, furnishings and other articles of movable personal property owned by Tenant and located

in the Demised Premises (all of which are sometimes referred to as "Tenant's Property"), shall be and shall remain the property of Tenant and may be removed by it at any time during the Term; ..."

Petitioner and its subsidiaries plan to make significant structural improvements to the building, including converting single floors to double height floors and adding electrical capacity, technological capacity and elevators.

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

Section 1101(b)(4)(i) of the Tax Law defines the term "retail sale" 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... regardless of whether the tangible personal property is to be resold as such before it is so used or consumed....

Section 1115(a) of the Tax Law exempts from the sales tax imposed under section 1105(a) of the Tax Law and from the compensating use tax imposed under section 1110:

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(15) Tangible personal property sold to a contractor, subcontractor or repairman for use in erecting a structure or building of an organization described in subdivision (a) of section eleven hundred sixteen, or adding to, altering or improving real property, property or land of such an organization as the terms real property, property or land are defined in the real property tax law; provided, 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.

(16) Tangible personal property sold to a contractor, subcontractor or repairman for use in maintaining, servicing or repairing real property, property or land of an organization described in subdivision (a) of section eleven hundred sixteen, as the terms real property, property or land are defined in the real property tax law; provided, 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.

Section 1116(a)(1) of the Tax Law provides for an exemption from sales and compensating use taxes with respect to the "state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another

state or Canada) or political subdivisions where it is the purchaser, user or consumer or where it is a vendor of services or property of a kind not ordinarily sold by private persons". The Port Authority constitutes such a public corporation exempt from sales and compensating use taxes.

Section 528.16 of the Sales and Use Tax Regulations states:

Tangible personal property sold to contractors for use in erecting structures of tax exempt organizations. [Tax Law, §1115(a)(15)]

Form of Contract. (1) The form of contract entered into between an exempt organization and its contractor is not relevant.

Section 541.3 of the Sales and Use Tax Regulations states:

Contracts with exempt organizations. [Tax Law, 1115(a)(15), (16), 1116(a);...]

(a) When a contractor's customer is a governmental entity described in section 1116(a)(1) or (2) of the Tax Law, the contract signed by the government representative and the prime contractor is sufficient proof of the exempt status of purchases made for such contract.

(1) such governmental entities include:

(i) Pursuant to section 1116(a)(1) of the Tax Law the State of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada), or political subdivisions. This group includes, but is not limited to:

* * *

(h) any authority ... created by act of the Legislature for a public purpose.

* * *

(d) Contracts with exempt organization.

(2) Purchase for contracts (other than agency contracts).

(i) Tangible personal property sold to a contractor, subcontractor, or repairman for use in erecting, repairing, adding to, or altering a structure or building owned by an exempt organization, described in section 1116(a) of

the Tax Law, is exempt when it is to become an integral component part of such structure or building.

- (ii) Purchases of tangible personal property incorporated into the real property of an exempt organization by subcontractors and repairmen are accorded the same treatment as purchases by the prime contractor.

* * *

- (v) Documents. (a) If the customer is a governmental entity, copies of signed contracts and government purchase orders are sufficient evidence to establish the exempt status of the job between the governmental entity and the prime contractor. With respect to the documents required between a prime contractor and the subcontractors, a signed document between them which identifies the project, location and exempt owner, will form the basis for tax exemption of tangible personal property purchased for incorporation into the exempt project. When purchasing such tangible personal property for the exempt project, the contractor or subcontractor will issue a properly completed contractor exempt purchase certificate to the supplier.

Under the lease agreement between Petitioner and 7 World Trade Company, "[a]ll Initial Work and Alterations, other than Tenant's Property shall be deemed the property of the Landlord." However, the lease between 7 World Trade Company and Port Authority provides that "legal title to the Tower building construction, including improvements, appurtenances and fixtures shall vest in the Port Authority immediately upon erection or affixation of all or any part on or to the premises." Accordingly, title to all improvements to 7 World Trade Center constructed by Petitioner's contractors and subcontractors vest in Port Authority.

Where tangible personal property purchased by Petitioner's contractors or subcontractors becomes an integral component part of 7 World Trade Center, such tangible personal property is considered to be incorporated into improvements to real property of an organization described in Section 1116(a) of the Tax Law. Accordingly, because such tangible personal property purchased by Petitioner's contractors or subcontractors for use in performance of the construction work contemplated in Petitioner's agreement with 7 World Trade Company will become integral

components of real property owned by Port Authority and because Port Authority will take title to such tangible personal property upon erection or affixation of all or any part on or to the premises the purchases of such tangible personal property will be exempt from sales and compensating use tax as provided under Section 1115(a)(15) and 1115(a)(16) of the Tax Law.

Petitioner's contractors and subcontractors may purchase tangible personal property which will be incorporated as integral components of the real property owned by Port Authority tax exempt provided they furnish the building material supplier with a properly completed form ST-120.1, Contractor Exempt Purchase Certificate. Petitioner and the contractor should keep on file a copy of the relevant portions of the lease between Petitioner and 7 World Trade Company along with a copy of the relevant portions of the lease between 7 World Trade Company and Port Authority as substantiation that the construction performed was exempt from sales and use tax under Section 1115(a)(15) and 1115(a)(16) of the Tax Law.

DATED: November 20, 1989

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.