

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

TSB-A-92 (15)S  
Sales Tax  
February 26, 1992

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S911016A

On October 16, 1991 a Petition for Advisory Opinion was received from Helmel Engineering Products Inc., 6520 Lockport Road, Niagara Falls, New York 14305.

The issue raised by Petitioner, Helmel Engineering Products Inc., is whether it is liable for collecting sales tax from customers on the total itemized charges for installing or servicing exempt machinery or equipment when the charges include expenses incurred by Petitioner's employees such as mileage charges, hotel expenses, auto rental charges and meal expenses plus any applicable sales tax paid by Petitioner.

Petitioner installs and services exempt manufacturing machinery for customers located within New York State. Petitioner's customers do not object to paying sales tax on amounts billed for the actual installation or service but do object to paying sales tax on the amounts billed for the various incurred expenses enumerated above.

Section 1101(b)(3) of the Tax Law defines "receipt" as the amount of the sale price of any property and the charge for any service taxable under Articles 28 and 29, without any deduction for expenses.

Section 526.5 of the Sales and Use Tax Regulations states, in part:

Receipt. [Tax Law, §§1101(b)(3), 1111(h)] (a) Definition. The word receipt means the amount of the sale price of any property and the charge for any service taxable under articles 28 and 29 of the Tax Law, valued in money, whether received in money or otherwise. . . .

(e) Expenses. All expenses, including telephone and telegraph and other service charges, incurred by a vendor in making a sale, regardless of their taxable status and regardless of whether they are billed to a customer are not deductible from the receipts.

Example 2: An appliance repairman charges \$10 per hour plus expenses when on a service call. The customer is billed as follows:

3 hrs. at \$10	\$30.00
Travel	15.00
Parts	20.00
Meals	<u>5.00</u>
Total Due	\$70.00

Receipt subject to tax is \$70

Section 1105 of the Tax Law states, in part:

Imposition of sales tax.--. . .there is hereby imposed and there shall be paid a tax. . .upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

(c) The receipts from every sale, except for resale, of the following services:

(3) Installing tangible personal property. . .or maintaining, servicing or repairing tangible personal property. . .

Section 1105-B of the Tax Law states, in part:

Reduced tax rates on certain parts, tools, supplies and services relating to tangible personal property used or consumed in production.--

(a) Notwithstanding any other provisions of this article, but not for purposes of the taxes imposed by section eleven hundred seven or eleven hundred eight or authorized pursuant to the authority of article twenty-nine of this chapter, the taxes imposed by subdivision (a) of section eleven hundred five on the receipts from the retail sales of parts with a useful life of one year or less,. . .for use or consumption directly or predominantly in the production of tangible personal property. . .for sale by manufacturing. . .shall be paid at the rate of two percent. . .commencing September first, nineteen hundred eighty. . ., and such retail sales shall be exempt from such tax on and after March first, nineteen hundred eighty-one.

(b) Notwithstanding any other provisions of this article, but not for the purposes of the taxes imposed by section eleven hundred seven or eleven hundred eight or authorized pursuant to the authority of article twenty-nine of this chapter, the taxes imposed by subdivision (c) of section eleven hundred five on receipts from every sale of the services of installing, repairing, maintaining or servicing the tangible personal property described in paragraph twelve of subdivision (a) of section eleven hundred fifteen, including the parts with a useful life of one year or less,. . .described in subdivision (a) of this section, to the extent subject to such tax, shall be paid at the rate of two percent. . .commencing September first, nineteen hundred eighty. . ., and such receipts shall be exempt from the tax. . .imposed under subdivision (c) of section eleven hundred five on and after March first, nineteen hundred eighty-one.

Section 1115 of the Tax Law states, in part:

Exemptions from sales and use taxes.

(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

(12) Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property. . .for sale. . ., but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment. . . .

Section 1210 of the Tax Law states, in part:

Taxes of Cities and Counties Administered by State Tax Commission.

(a)(1). . .Any local law, ordinance or resolution, enacted by any city of less than 1 million or by any county or school district imposing the taxes authorized by this subdivision, shall exclude from the operation of such local taxes all sales of tangible personal property for use or consumption directly and predominantly in the production of tangible personal property. . .for sale by manufacturing. . .

In the instant matter, the portion of receipts billed by Petitioner as expenses which are incurred in the performance of Petitioner's employees' installation or service assignments, under the provisions of Section 1101(b)(3) of the Tax Law and Section 526.5(a) and (e) of the Sales and Use Tax Regulations cannot be excluded from the total receipts subject to tax. The entire billing, including any expenses incurred by Petitioner's employees, is considered to be the sales price paid by Petitioner's customers for the installation or servicing of machinery or equipment and therefore is subject to the sales tax imposed under Section 1105(a) of the Tax Law.

However, where such machinery or equipment is used directly and predominantly to produce tangible personal property for sale, the receipts from the sale of such machinery or equipment, including parts with a useful life of more than one year, will qualify for the exemption from New York State and local sales tax as provided under Section 1115(a)(12) of the Tax Law.

The receipts from the sale of parts with a useful life of one year or less, tools and supplies and the sale of the service of installing, repairing or maintaining such machinery or equipment including the parts with a useful life of one year or less, tools and supplies will be exempt from the statewide tax of 4% under the provisions of Section 1105-B (a) and (b) of the Tax Law, respectively.

The receipts from the sale of parts with a useful life of one year or less, tools and supplies will be exempt from all local sales and use taxes except the New York City tax where applicable, under the provisions of Section 1210(a)(1) of the Tax Law.

However, the receipts from the service of installing, repairing, maintaining or servicing such machinery and equipment, including parts, tools and supplies used in connection with such machinery or equipment will be subject to the New York City tax, where applicable, and subject to all other local sales and use tax, where applicable.

DATED: February 26, 1992

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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