

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

TSB-A-94 (17)S
Sales Tax
April 28, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940215A

On February 15, 1994 a Petition for Advisory Opinion was received from Leprino Foods Company, 1830 W. 38th Avenue, Denver, CO 80211-2200.

The issue raised by Petitioner, Leprino Foods Company, is whether Petitioner's motor control centers qualify for the exemption for machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property for sale provided under Section 1115(a)(12) of the Tax Law.

The electrical distribution system at Petitioner's Waverly, New York plant begins with a 34,500 volt service delivered to the facility by means of air switches and transformers located at the facility. The power, supplied by Penn Electric, enters the building through large conduit runs and goes directly to the main distribution system.

This distribution center is where the power is broken down to "usable" electric. The area is broken down into two sections, north and south. Main electric from these areas enter various "buckets" each assigned to feed specific areas of the facility. Power feeds are then distributed throughout the facility and feed various motor control centers (MCC's).

The MCC's house motor starters and frequency inverters designed to be used specifically for individual pieces of equipment. These components vary to conform to production equipment requirements and are an integral and direct part of the equipments' ability to produce to standards required. These units are also required to insure a safe means of operation. The MCC starters are the last positive on/off switch from the main power source to the equipment without shutting down either the entire north or south power feeds.

A motor starter is an electrical unit, which is designed solely and used exclusively for controlling the operation of a specific piece of equipment. Starters are available in various sizes and must be specifically designed to supply proper voltage to the process equipment, which will in turn assure proper operation and protection.

Frequency inverters are at times housed in MCC units and are required to ensure that variable speed control is available for specifics of the operation. Typical items that need control from systems like these are liquid flows, pump speeds, agitator speeds, etc. For example, Petitioner uses different dicing blades on the dicers. These blades enable Petitioner to produce shredded cheese to customer's specifications (different sizes of shredded cheese). The speed of the dicer must be modified according to which blade is being used. The frequency inverters enable Petitioner's production workers to control this. Without this ability, Petitioner's cheese would not be saleable.

Even though the inverters supply a more exacting or variable process control, both are integral to Petitioner's ability to not only produce a product but also process, package and maintain that product as a saleable commodity. Also, as equipment is modified, upgraded or replaced, the starters and inverters must be resized.

Continuing the electric flow, conduits are run directly to the individual pieces of equipment from either the starters or inverters. In this conduit line is an on/off switch or box in close proximity to the user piece of equipment. The sole intent of this switch is safety. It affords in emergency situations to shut down the equipment rapidly. This switch is not an acceptable break from the main power source per OSHA regulations. Only the starters are acceptable options.

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 by manufacturing, processing, generating,..., but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus.

Section 528.13(c) of the Sales and Use Tax Regulations states, in part:

(1) Directly means 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 casual 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.

(2) Usage in activities collateral to the actual production process is not deemed to be used directly in production.

All electrical parts actually attached to a qualifying piece of production machinery or equipment are deemed to assume the identity of such machinery and equipment and are therefore entitled to the same exemption as the machinery and equipment. All other electrical components are not used directly in production and therefore are not entitled to the exemption contained in Section

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1115(a)(12) of the Tax Law. (See, New York State and Local Sales Tax Information for Manufacturers, New York State Department of Taxation and Finance Publication 852 (9/86) at page 11).

In the instant matter, the motor starters and the frequency inverters which are designed to be used specifically with individual pieces of machinery and equipment and which are directly wired to the individual pieces of machinery or equipment are considered to assume the identity of such machinery or equipment and are entitled to the same exemption afforded the machinery or equipment. Accordingly, where the machinery or equipment is used directly and predominantly (more than 50 %) in Petitioner's process of producing tangible personal property consisting of food for sale, Petitioner's purchases of such motor starters and frequency inverters will qualify for the exemption from tax provided under Section 1115(a)(12) of the Tax Law and Section 528.13(c) of the Sales and Use Tax Regulations. Petitioner's purchase of the motor control centers which house the motor starters and frequency inverters will also qualify for the exemption provided under Section 1115(a)(12) of the Tax Law and Section 528.13(c) of the Sales and Use Tax Regulations.

DATED: April 28, 1994

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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