

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

TSB-A-81 (29) S
Sales Tax
October 5, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810422B

On April 22, 1981, a Petition for Advisory Opinion was received from Al Tech Specialty Steel Corporation, Willowbrook Avenue, Dunkirk, New York 14048.

The issue raised is whether testing equipment used in Petitioner's laboratories located at both of its production plants qualifies as production equipment and whether, as such, it is exempt from state and local sales tax.

Petitioner uses the equipment in its laboratories predominantly (more than 50 per cent of use) to perform chemical and physical tests of steel during the production process. Molten steel is chemically analyzed to insure that all components of the product meet the purchaser's specifications. Hardened steel is physically tested to insure that the tensile strength of the steel also meets the purchaser's specifications.

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).

In explaining the application of the manufacturing exemption, the Sales and Use Tax Regulations state: "Production includes the production line of the plant starting with the handling and storage of raw materials at the plant site and continuing through the last step of production where the product is finished and packaged for sale . . ." 20 NYCRR 528.13(b). The Regulations further 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).

Equipment used directly and predominantly for production line testing and quality control qualifies for exemption from State and local taxes, except the New York City local tax.

Since Petitioner's testing equipment is used directly and predominantly in performing chemical and physical analyses of the steel during the production process to insure conformity with purchaser specifications, the testing equipment used for such quality control is manufacturing equipment which qualifies for exemption from State and local sales and compensating use taxes (except the New York City tax) pursuant to section 1115(a)(12) of the Tax Law. Such exemption is applicable even though the equipment is situated in off-line laboratories.

DATED: September 18, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau