

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

TSB-A-83(29)S  
Sales Tax  
June 24, 1983

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S821018A

On October 18, 1982 a Petition for Advisory Opinion was received from Lancaster Steel Service Co. Div. of Lancaster Iron & Metal Co., Inc., 126 Central Avenue, Lancaster, New York 14086.

The issue raised is whether Petitioner's operations constitute production within the meaning of section 1115(a)(12) of the Tax Law.

Petitioner operates a steel warehouse which stocks a variety of steel products such as sheets, plates, angles, bar stock, and re-bar as well as wire and foundry supplies. Using its machinery and equipment, Petitioner cuts, shapes, drills and bends warehouse stock to meet its customer's specifications, and sells the resultant creations. Petitioner does not do any installation work. Petitioner states that it uses the following machines: plate shears (to change the size and shape of pieces of steel); automatic burning machines (to burn out pieces of plate to order); an iron worker machine (to drill holes in steel); threading machines; steel cutting saws; and bending machines.

Section 1115(a)(12) of the Tax Law provides an exemption from sales tax with respect to machinery and equipment "for use or consumption directly and predominantly in the production of tangible personal property . . . by . . . processing . . . ." Processing is defined as "the performance of any service on tangible personal property which effects a change in the nature, shape or form of the property." 20 NYCRR 531.2(e). Machinery or equipment is used predominantly in production if over fifty per cent of its use (measured in terms of time) is in production.

The activities described by Petitioner constitute processing, within the meaning and intent of Section 1115(a)(12) of the Tax Law. Accordingly, Petitioner's purchase of machines or equipment which are predominantly used in such activities may be purchased without the payment of sales tax. Parts, tools and supplies to be used predominantly in connection with such activities are exempt from tax where purchased on or after March 1, 1981, but were subject to a 2% State tax where purchased between September 1, 1980 and February 28, 1981, and were subject to the full 4% State tax where purchased prior to September 1, 1980.

DATED: June 8, 1983

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau