

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

TSB-A-83(31)S
Sales Tax
July 6, 1983

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S820930C

On September 30, 1982 a Petition for Advisory Opinion was received from The Southland Corporation, 425 Cherry Street, Bedford Hills, New York 10507.

The issue raised herein is the taxability of electricity used to power an ice-maker used in 7-11 retail food stores.

The ice cubes produced by the ice-maker are transferred to the holding bin of a machine called a mixer/cuber. The mixer/cuber is used to produce a carbonated soft drink receipts from the sale of which are subject to tax under section 1105(d) of the Tax Law. (See Southland Corporation, State Tax Commission Advisory Opinion, Petition No. S820930B, , 1983). The ice cubes are used to keep the temperature in the mixer/cuber at a sufficiently low level to permit the production of the carbonated beverage. The ice cubes are subsequently removed from the mixer/cuber and placed in the cups in which the drink is sold.

For the reasons set forth in the above-cited Advisory Opinion, the electricity used to power the ice-maker, like that used to power the mixer/cuber, is not subject to the exemption from sales tax provided for under section 1115(c) of the Tax Law. Southland Corporation, supra; Burger King v. State Tax Commission, 51 N.Y. 2d 614. The electricity is accordingly subject to sales tax, pursuant to section 1105(b) of the Tax Law.

DATED: June 10, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau