

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

TSB-A-84(32)S
Sales Tax
October 15, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S830623A

On June 23, 1983 a Petition for Advisory Opinion was received from Entenmann's Inc., 1724 5th Avenue, Bay Shore, New York 11706.

The issue raised is whether electricity used to provide lighting in a production facility qualifies for exemption from the sales tax pursuant to section 1115(c) of the Tax Law. Section 1115(c) of the Tax Law provides an exemption from the sales tax with respect to electricity purchased "for use or consumption directly and exclusively in the production of tangible personal property . . . for sale, by manufacturing, processing, assembling"

Section 528.22(a)(2) of the Sales and Use Tax Regulations, which explicates the foregoing statutory provision, provides that electricity used in the lighting of buildings is subject to tax. The applicability of this general statement to buildings employed as production facilities is indicated at 20NYCRR 528.22(c)(3)(v) Ex. 4, which provides as follows:

A manufacturing plant purchases electricity to power its production machinery and also to light its buildings. Only the electricity used to power the production machinery is used directly in production.

It follows from the foregoing that the receipts from Petitioner's purchases of electricity for the lighting of a production facility are subject to tax. In accord with this conclusion is Matter of Ellenville Handle Works, Inc., State Tax Commission, TSB-H-80(220)S. In that proceeding the State Tax Commission held to be subject to tax the receipts from the purchase of electricity used to light working areas in a manufacturing plant. See also Fancher Chair Co., Inc., State Tax Commission Advisory Opinion, TSB-A-83(11)S.

DATED: July 11, 1984

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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