

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

TSB-A-90(11)S
Sales Tax
March 21, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S890921A

On September 21, 1989 a Petition for Advisory Opinion was received from RyTown Millwork, Inc., Smith Terrace, Manchester, New York 14504.

The issue raised by Petitioner, RyTown Millwork, Inc., is whether its business activities qualify its purchases of machinery or equipment for the exemption provided under Section 1115(a)(12) of the Tax Law for machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property for sale.

Petitioner is a distributor of windows and doors, selling directly to builders and contractors. Petitioner does not perform installation work.

Petitioner's business activities frequently involve the following:

1. Standard Window Operation - Petitioner withdraws standard set-up window units (brand name window units purchased for resale by Petitioner) from stock and modifies such units as follows:
 - a. Extension jambs are added to accommodate various wall thicknesses.
 - b. Two or more units are mulled together to form a multisection unit.
 - c. Custom units (manufactured in Petitioner's custom millwork shop) are mulled to standard set-up window units.
 - d. Special exterior casings (manufactured by Petitioner) are applied to standard set-up window units.
2. Door Operation - Petitioner withdraws a basic door from door shop stock and modifies such door as follows:
 - a. A basic door frame is assembled from pre-cut parts.
 - b. An opening is cut in a basic door; a door light (any one of various designs) is installed.
 - c. Brickmould, cut from lineal stock, is applied as exterior trim.
 - d. Custom exterior casings and transom units (manufactured from raw materials in Petitioner's door shop) and sidelights are then attached.

3. Custom Millwork Operation - Petitioner's custom millwork shop manufactures custom window units (round top windows, round windows, half-round windows, elliptical windows, etc). These custom units are built from rough sawn lumber. Petitioner's manufacturing process requires the rough sawn lumber to be planed and cut prior to use in building a custom unit. Thin layers of wood, glued together, compressed and then milled into various curve shaped frames are used to manufacture the custom window units to specifications supplied by the customers.

Section 531.2 of the Sales and Use Tax Regulations states, in part:

Definitions....

(b) Manufacturing. Manufacturing is the production of tangible personal property that has a different identity from its ingredients. Manufacturing includes the production of standardized items as well as the production of items to a customer's specifications...

Example 5: Company E combines metal, wood, glass, and other component parts into structural panel sections which are joined to form the bearing walls of a building. These panels are manufactured products...

(c) Assembling. Assembling is the coupling or the uniting of parts or materials as a manufacturing process or as a step in the manufacturing process which results in a new product...

Example 2: Company C combines pre-cut glass, plastic, aluminum extrusions and rubber gaskets to make storm windows. Such combining of materials is assembling...

(e) Processing. Processing is the performance of any service on tangible personal property which effects a change in the nature, shape or form of the property...

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, ... assembling,....

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Whereas all of Petitioner's business activities fall within the definitions of manufacturing, assembling or processing as stated in Section 531.2 of the Sales and Use Tax Regulations and whereas Petitioner does not perform any installation work, Petitioner is considered to be manufacturing, assembling or producing tangible personal property for sale. Accordingly, any machinery or equipment which is purchased by Petitioner for predominant use in the business activities described herein will qualify for the tax exemption provided under Section 1115(a)(12) of the Tax Law.

It is noted that if Petitioner has paid New York State and Local Sales or Use Tax on any purchases of machinery or equipment which qualified for the exemption provided under Section 1115(a)(12) of the Tax Law at the time of such purchase, Petitioner may request a credit or refund of such taxes paid by completing a properly completed form AU-11, Application for Credit or Refund of State and Local Sales or Use Tax and submitting it to New York State Department of Taxation and Finance, Central Office Audit Bureau - Sales Tax, W.A. Harriman Campus, Albany, New York 12227.

DATED: March 21, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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