

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

TSB-A-84(5)S
Sales Tax
March 6, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S831212A

On December 12, 1983 a Petition for Advisory Opinion was received from Alox Corporation, 3943 Buffalo Avenue, Niagara Falls, New York 14303.

The issue raised is whether rental payments for a trailer used by a manufacturer exclusively in transporting industrial waste to pollution control centers constitute receipts from the purchase of machinery or equipment used directly in production so as to qualify for the exemption from sales tax provided for under section 1115(a)(12) of the Tax Law.

Petitioner states that it is engaged in a manufacturing process which generates industrial waste. Petitioner rents a trailer which is used exclusively to remove the waste from its plant and to deliver it to water pollution control centers.

Section 1115(a)(12) of the Tax Law provides for an exemption from sales tax with respect to machinery or equipment purchased (including rentals) "for use or consumption directly and predominantly in the production of tangible personal property . . . for sale, by manufacturing, " The Sales and Use Tax Regulations provide that machinery and equipment "used for disposing of industrial waste, as a part of a process for preventing water or air pollution, will be considered as being used directly and predominantly in production . . . if (i) the machinery and equipment is purchased by a manufacturer and used predominantly to actually treat, bury, or store waste materials from a production process "20 NYCRR 528.13(d).

Accordingly, since Petitioner's trailer is not used to actually treat, bury or store waste materials, but merely to transport the waste, it does not constitute machinery or equipment used directly and predominantly in production. Amounts paid as rental for such trailer are accordingly subject to tax.

DATED: February 15, 1984

s/FRANK J. PUCCIA
Director
Technical Services Bureau