

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

TSB-A-85 (30)S  
Sales Tax  
July 26, 1985

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S840827B

On August 27, 1984 a Petition for Advisory Opinion was received from Sheldon Construction Co., Inc., 3475 Route 78, South Wales, New York 14139.

The issue raised is whether Petitioner is required to pay sales tax on its purchase or rental of equipment and supplies used in demolishing railroad bridges and processing the resultant scrap.

Petitioner sells scrap products processed from the demolition of old railroad bridges and rail. The bridges are purchased at a nominal cost prior to commencing processing. Petitioner does not maintain a plant or yard in which to store or process the scrap; the entire process is performed at the bridge site. All of the required equipment is transported to the job site.

Petitioner's process begins by cutting out webbings and other bridge components which are lifted out by crane or pulled down off the structure with a bulldozer. Cranes are then utilized to lift the main bridge structure (or pieces of it) and place it in a nearby open area where it can be further cut up into small pieces. Acetylene torches and other cutting equipment are used in the process.

The adjacent railroad track is similarly processed. The track is lifted out of the ground (using bulldozers and cranes) and cut to saleable lengths.

Petitioner states that the maximum saleable length (due to industry specifications) is two feet by five feet. Once cut to saleable lengths, all available scrap is loaded onto trucks or railroad cars by use of a crane and is sent off to customers. Petitioner states further that the scrap is extremely marketable and it never maintains an inventory.

While not so stated in the Petition, it is presumed that Petitioner proposes exemption from tax as follows:

(1) Exemption from State sales and use tax under section 1115(a)(12) of the Tax Law for "[m]achinery or equipment for use or consumption directly and predominantly in the production of tangible personal property . . . for sale, by manufacturing [or] processing . . ."

(2) Exemption from State sales and use tax under section 1105-B of the Tax Law, for the period after March 1, 1981, for . . . parts . . . , tools and supplies for use or consumption directly and predominantly in the production of tangible personal property . . . for sale by manufacturing [or] processing . . ."

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(3) Exemption from local sales and use tax under section 1210(a)(1) of the Tax Law for ". . . all . . . tangible personal property for use or consumption directly and predominantly in the production of tangible personal property . . . for sale, by manufacturing [or] processing . . . "

It should be noted that under each of the above provisions there is the requirement that the item of property to be exempted must be used or consumed" . . . directly and predominantly in the production of tangible personal property. . . for sale by manufacturing [or] processing . . . "

The principal service provided by Petitioner is that of demolition. The use of machinery, equipment and supplies for such demolition does not qualify as production of tangible personal property for sale by manufacturing or processing. The processing (cutting up) of the scrap resulting from the demolition of bridges qualifies as the production of tangible personal property for sale by processing. However, in order to qualify for exemption pursuant to the provisions of sections 1115(a)(12), 1105-B and 1210(a)(1) of the Tax Law, the machinery, equipment and supplies must be used predominantly in production of tangible personal property for sale by manufacturing or processing. All available information indicates that the machinery equipment and supplies are not used predominantly in the production of tangible personal property.

Accordingly, Petitioner does not qualify for exemption pursuant to the provisions of sections 1115(a)(12), 1105-B and 1210(a)(1) of the Tax Law and must, therefore, pay state and all applicable local sales tax on all such purchases.

DATED: July 3, 1985

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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