

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

TSB-A-89 (23)S  
Sales Tax  
July 25, 1989

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S890104D

On January 4, 1989, a Petition for Advisory Opinion was received from William R. Barlow, 96 Martha Street, Spencerport, New York 14559.

The issue raised is the taxability of a design change made on a printing press that takes place prior to the sale of the printing press to the customer.

Section 1115(a)(12) of the Tax Law exempts from tax the sale of "[m]achinery or equipment for use or consumption directly and predominantly in the production of tangible personal property ... by manufacturing, processing, generating, assembling, refining, mining or extracting." Section 528.13 of the Sales and Use Tax Regulations states: "[a]n Exempt Use Certificate (form ST-121) is used to make purchases eligible for this exemption without payment of sales tax."

Section 1105(c)(3) imposes tax upon the receipts from "[i]nstalling tangible personal property, excluding a mobile home, or maintaining, servicing or repairing tangible personal property, including a mobile home, not held for sale in the regular course of business,...."

Section 1105-B(6) provides: [n]otwithstanding any other provisions of this article, but not for the purposes of the taxes imposed by section eleven hundred seven or eleven hundred eight or authorized pursuant to the authority of article twenty-nine of this chapter, the taxes imposed by subdivision (c) of section eleven hundred five on receipts from every sale of the services of installing, repairing, maintaining or servicing the tangible personal property described in paragraph twelve of subdivision (a) of section eleven hundred fifteen,...to the extent subject to such tax,...such receipts shall be exempt from the tax on sales imposed under subdivision (c) of section eleven hundred five on and after March first, nineteen hundred eighty-one."

Accordingly, the sale of the printing press is exempt from the State tax pursuant to Section 1115(a)(12) of the Tax Law and all local tax except for the local tax imposed by New York City provided that Petitioner obtains an Exempt Use Certificate from its customers. If Petitioner makes a design change prior to the delivery of the property to the customer, the charge for the design change is treated the same as above. Therefore, the charge for the design change would be exempt from tax provided that Petitioner obtains an Exempt Use Certificate from its customers.

However, where Petitioner's customer finds that printing press produced according to its original specifications is not what is needed, and accordingly has Petitioner make design changes to such equipment, such as a design change in an electrical control, subsequent to the delivery of the equipment to the customer by the Petitioner, then Petitioner's service constitutes the maintaining,

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servicing or repairing of tangible personal property within the meaning and intent of Section 1105(c)(3) of the Tax Law. The receipts from such service are subject to local tax but not to State tax after March 1, 1981 pursuant to Section 1105-B(6).

DATED: July 25, 1989

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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