



procedures. As a final part of this step, Petitioner's highly trained laboratory technicians prepare requested tissue to meet customer specifications.

Third, Petitioner must prepare the requested tissue specimen for delivery and transport it. This process includes the documentation of the tissue request from the medical agency, possible thawing of specific tissue related to that request, separation of a particular body part, testing of the tissue for suitability and then the shipment and/or delivery of that specific tissue to the customer. Shipment is done via vacuum sealed containers, dry ice and other similar provisions to ensure the preservation and security of the tissue in transit.

### **Analysis**

The Tax Law imposes sales and use tax on retail sales of tangible personal property and the sale, except for resale, of certain enumerated services. *See* Tax Law § 1105(a), (b), and (c). Under New York law, "there is no right of property in a dead body . . . in the commercial sense." *Finley v. Atl. Transp. Co.*, 220 NY 249, 255 (1917). Accordingly, in transferring a tissue specimen to a medical facility or laboratory for medical research and training purposes, Petitioner is not making a sale of tangible personal property. Rather, it is performing a service, which involves removal, transportation, processing, preservation and storage of a human organ. Because this service is not one of the services made subject to sales tax, the consideration Petitioner receives for this service is not subject to sales tax.

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