

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

TSB-A-84(12)S
Sales Tax
March 23, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S820302B

On March 2, 1982 a Petition for Advisory Opinion was received from Sims Matchplate Corp., 2176 East Erie Boulevard, Syracuse, New York 13224.

The issues raised in this Petition are (1) whether sales tax should be charged by Petitioner on customer requested modifications made to patterns owned by the customers, and (2) whether sales tax should be charged on such modifications, and on the maintenance of such patterns, when the charge therefor is made to Petitioner's parent company, Sims Casting Corp.

Petitioner, a wholly owned subsidiary, produces foundry pattern equipment for use primarily in the foundry operated by its parent company, Sims Casting Corp.

In the first described situation, Petitioner's customers submit drawings or blueprints of a part they wish to have cast. Petitioner then designs and builds pattern equipment necessary to produce molds used to make the castings. When a pattern is completed it is billed to and paid for by the customer. At this point the pattern is the property of the customer and cannot be used without its permission. The pattern may be left with Sims Casting, to be used to produce castings for the customer.

After a pattern has been produced, customers sometimes find that certain modifications are necessary and request that Petitioner perform this work. Charges for such modifications are also billed to the customer. Petitioner states that its customers, most of whom are contractors, purchase the service of pattern modification for resale to their own customers. Petitioner states that it also performs such service and, in addition, performs maintenance services, on the customer-owned patterns, for Sims Casting, which is billed directly for the same. Petitioner states that such purchases of services are made for resale, in that Sims Castings includes the cost of such modifications and maintenance in its prices for the castings.

Section 1105(c)(2) of the Tax Law imposes a tax on the receipts from the sale, except for resale, of the service of fabricating or processing "tangible personal property, performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale, upon which such services are performed." "Fabrication" is defined as "the alteration or modification of a manufactured product without a change in the identity of the product. Fabrication includes cutting, perforating, and similar operations." 20 NYCRR 531.2(d). "Processing" is defined as "the performance of any service on tangible personal property which effects a change in the nature, shape or form of the property." 20 NYCRR 531.2(e). Where Petitioner's customer finds that pattern equipment produced according to its original specifications is not what is needed, and accordingly has Petitioner make modifications to such equipment, Petitioner's service constitutes the service of fabricating or processing, within the meaning of the statutory provision quoted supra. International

TSB-A-84(12)S
Sales Tax
March 23, 1984

Heat & Air Conditioning Corporation, State Tax Commission, TSB-H-80(224)S; Imperial Wall-covering, Inc., State Tax Commission, TSB-H-83(49)S; Grant Hardware Company State Tax Commission Advisory Opinion, TSB-H-81(6)S; Oberdorfer Foundries, Inc., State Tax Commission, STH 76-40. The receipts from the sale of such service are subject to tax except where the tangible personal property has been purchased for resale, and except where the service is itself purchased for resale. Petitioner states that its service is purchased for resale. It is to be noted that, pursuant to section 1132(c) of the Tax Law, receipts from sales of the services described in section 1105(c)(2) of the Tax Law are presumed to be "subject to tax until the contrary is established" by the vendor, and that "the sale shall be deemed a taxable sale at retail" unless the vendor has taken from its customer a Resale Certificate (Form ST-120). Accordingly, Petitioner need not collect tax where it acts in good faith in accepting a properly completed resale certificate from its customers. Saf-Tee Plumbing v. Tully, 77 A.D.2d 1. In addition, no tax need be collected if the customer presents Petitioner with a copy of its Direct Payment Permit.

In the second described situation, Sims Castings, while having in its possession the customer-owned pattern equipment, directs Petitioner to modify the same. In addition, Sims Castings has Petitioner repair such pattern equipment. The expenses incurred for such modification and repairs are incorporated, by Sims Castings, into the sale price of the castings. As indicated above, the service of modification of the patterns is one described in section 1105(c)(2) of the Tax Law. The service of repair of the patterns is one described in section 1105(c)(3) of the Tax Law, which imposes a tax on the receipts from the sale of such service, except where purchased for resale, and where the property repaired is "not held for sale in the regular course of business." In the situation presented by Petitioner, the services of modification and repair are not purchased for resale because what Sims Castings sells to its customers are castings, not a modification or repair service. In addition, the repair service is not being performed on property "held for sale in the regular course of business." Accordingly, receipts from the sale of the services of modifying and repairing the patterns are subject to tax. However, section 1105-B of the Tax Law provides, among other things, that where such repair service (but not the service of modification) is performed on equipment used directly and predominantly in the production of tangible personal property for sale by manufacturing, which would presumably include the pattern equipment here under discussion, the State rate of tax was reduced from 4% to 2% for the period commencing September 1, 1980 and ending February 28, 1981, and sales of such service were rendered exempt from the State 4% tax on and after March 1, 1981. Such rate reduction and subsequent exemption were not made applicable to locally imposed sales taxes. All other conclusions reached above are applicable to locally imposed sales taxes as well as to the State tax.

DATED: March 6, 1984

s/FRANK J. PUCCIA
Director
Technical Services Bureau