

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

TSB-A-90(35)S
Sales Tax
July 24, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S900618B

On June 15, 1990 a Petition for Advisory Opinion was received from Stanley Greenfield, 55 Knolls Crescent #10B, Bronx, New York 10463.

The issue raised by Petitioner, Stanley Greenfield, was whether his professional activities constitute the carrying on of a protective and detective service subject to the imposition of sales tax pursuant to Section 1105(c)(8) of the Tax Law.

Petitioner is an engineer specializing in machine design. As an engineer specializing in machine design his function is to analyze machine design practices and standards. His work product consists of engineering reports that analyze design standards, machine design practices, and attempt to establish negligence as related to industrial products liability.

His professional activities include the inspection of industrial machinery involved in accidents, library research pertaining to machine design standards and codes, preparation of engineering reports and testimony at pre-trial hearings and at trial. All these professional activities pertain only to machine design.

He is semi-retired with a one-client practice; a law firm in New Jersey. All his engineering reports are delivered to his client in New Jersey.

Section 1105(c)(8) of the Tax Law as enacted by Chapter 190 of the Laws of 1990 imposed sales tax upon:

Protective and detective services, including, but not limited to, all services provided by or through alarm or protective systems of every nature, including, but not limited to, protection against burglary, theft, fire, water damage or any malfunction of industrial processes or any other malfunction of or damage to property or injury to persons, detective agencies, armored car services and guard, patrol and watchman services of every nature other than the performance of such services by a port watchman licensed by the waterfront commission of New York harbor, whether or not tangible personal property is transferred in conjunction therewith.

Section 525.2(a)(3) of the Sales and Use Tax Regulations provides:

The sales tax is a "destination tax," that is, the point of delivery or point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate. For special rule relating to motor vehicles, see Part 540 of this Title.

Generally detective services include activities by an individual who among other things makes investigations to obtain information regarding the causes of accidents, damage or injury or is engaged in securing evidence to be used in trials or hearings. (13 New York Jurisprudence 2d, Businesses and Occupations §284, at 103).

Section 1105(c)(8) of the Tax Law is substantially similar to Section 1212-A(b)(2)(i)(B) of the Tax Law allowing New York City to impose sales tax on protective and detective services.

New York State Department of Taxation and Finance, Sales Tax Information on Selected Services in New York City, Publication 849 (1/89) in listing protective and detective services subject to the New York City sales tax states at page 8:

"Q. Are the services of trial preparation investigating, for the purpose of evaluating the merits of a claim with respect to fixing a settlement values, subject to the 4% sales tax imposed by New York City?

A. Yes, when the reports are delivered to a client in New York City."

Therefore Petitioner's activities in obtaining information regarding defective machinery for use in establishing negligence in tort cases comes within the definition of protective and detective services as intended by Section 1105(c)(8) of the Tax Law.

However if the reports are sent to a client of Petitioner located outside of New York State, such as attorneys located in New Jersey, then the charge for the reports are not subject to sales tax pursuant to Section 525.2(a)(3) of the Sales and Use Tax Regulations.

DATED: July 24, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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