

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

TSB-A-90(41)S
Sales Tax
August 14, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S900713A

On July 13, 1990, a Petition for Advisory Opinion was received from Sher Test Corporation, 93 Belvedere Drive, Yonkers, New York 10705.

The issue raised by Petitioner, Sher Test Corporation, is whether the sales of aerosol sprays that are used to detect the presence of substances such as marijuana, cocaine and explosives are subject to sales tax.

Petitioner is planning to embark on sales of sets of aerosol sprays that are used to detect the presence of substances such as marijuana and cocaine.

Typical customers will be law enforcement agencies and other government agencies such as the United States Coast Guard or the United States Customs Service. Other customers might be industrial organizations, interested in a drug-free workplace, and coaches and counselors in schools or rehabilitation centers. Also, Petitioner plans to sell to individuals, typically parents, for use in detecting drugs at home.

Eventually, Petitioner plans also to sell sprays to detect the presence of explosives. It anticipates these sprays will be sold only to law enforcement and other governmental agencies.

Section 1105(a) of the Tax Law imposes a sales tax upon "the receipts from every retail sale of tangible personal property, except as otherwise provided in this article".

Section 1101(a)(4)(i) of the Tax Law defines retail sale in part as:

(i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3) and (5) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax. . . .

Section 1101(a)(6) of the Tax Law defines tangible personal property as:

Corporeal personal property of any nature. However, except for purposes of the tax imposed by subdivision (b) of section eleven hundred five, such term shall not include gas, electricity, refrigeration and steam.

Section 1116(a) of the Sales Tax Law provides in part:

Except as otherwise provided in this section, any sale. . .to any of the following. . . shall not be subject to the sales and compensating use taxes imposed under this article:

(1) The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer,. . .

(2) The United States of America, and any of its agencies and instrumentalities, insofar as it is immune from taxation where it is the purchaser, user or consumer,. . .

Sets of aerosol sprays that detect the presence of substances such as marijuana, cocaine and explosives constitute tangible personal property in accordance with the meaning and intent of Section 1101(a)(6) of the Tax Law. The sales of such items to customers such as industrial organizations and parents for their own use constitute retail sales in accordance with the meaning and intent of Section 1101(a)(4)(i) of the Tax Law and therefore sales tax is imposed on such sales by section 1105(a) of the Tax Law.

However sales of aerosol sprays to detect such substances to the United States of America or its agencies or instrumentalities such as the Coast Guard or the Customs Service would be exempt from sales tax pursuant to Section 1116(a)(2) of the Tax Law.

Furthermore sales of such sprays to New York State or any of its agencies, instrumentalities, public corporations or political subdivisions such as the State Police, local municipal police forces or school districts would be exempt from sales tax pursuant to Section 1116(a)(1) of the Tax Law.

DATED: August 14, 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.