

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

TSB-A-90 (4)S
Sales Tax
February 15, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S891215D

On December 15, 1989, a Petition for Advisory Opinion was received from PCA Engineering, Inc., 127 Royal Avenue, P.O. Box 227, Hawthorne, New Jersey 07507.

The issue raised by Petitioner, PCA Engineering, Inc., is whether charges paid for "Non-Destructive Testing" services and reports are subject to sales and use tax.

Petitioner is engaged in the business of providing services to its clients which include the service of testing, investigating and evaluating the physical characteristics of materials, generally of a metallic nature, which are incorporated into or are a principal element of utilities, structures, buildings, machines and equipment, through certain testing methods which are not destructive to the material to be tested (hereinafter "Non-Destructive Testing"). The principal Non-Destructive Testing methods utilized by the Petitioner are: (i) magnetic particle testing, (ii) ultrasonic testing, (iii) liquid penetrant testing, (iv) eddy current testing, (v) leak testing (including the sonic, halogen gas, flame ionization, gas chromatograph, foam, hydrostatic/dynamic, chemical indicators, electric vacuum and pigging methods), and (vi) acoustic emission testing. Each of these testing methods requires the application of engineering principles and data.

The results of the Non-Destructive Testing services provided by the Petitioner to its clients are summarized by Petitioner in a report which is provided to the client for whom the services are rendered and is not substantially incorporated in reports provided to other persons. The report is provided by the Petitioner exclusively to its client with the exception that the report is often also provided on behalf of the client to the local fire authority in which the tested utility, structure, building, machine or equipment is located to facilitate the safeguarding of life, health and property.

In addition to satisfaction of the applicable requirements of the laws of the State of New York concerning the licensed practice of engineering within the State of New York, the Petitioner is further governed by standards established by the American Society for Non-Destructive Testing. All Non-Destructive Testing services and reports are supervised and reviewed by the Petitioner's personnel who, as well as being engineers, are certified as Non-Destructive Testing Level III specialists, the highest certification level recognized by the American Society for Non-Destructive Testing.

An example of the services provided by the Petitioner is the testing of the structural components of a storage tank to detect any internal or external flaws and measure geometric characteristics of the structure.

Section 1105(c) of the Tax Law imposes a tax on the receipts from every sale, except for resale, of the following services:

(1) The furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons.... (Emphasis added).

Regulation Section 527.3(b)(2) further explains Section 1105(c)(1) of the Tax Law as follows:

The sales tax does not apply to the receipts from the sale of information which is personal or individual in nature and which is not or may not be substantially incorporated into reports furnished to other persons by the person who has collected, compiled or analyzed such information....

Furthermore, forage testing reports (David J. Converse, Adv Op St Tax Comm, August 4, 1981, TSB-A-81(12)S); concrete sample testing reports (Fortunato Sons Inc., Adv Op St Tax Comm, July 28, 1986, TSB-A-86(30)S); and power mower testing reports (Garden Way Incorporated, Adv Op Comm T & F, July 25, 1989, TSB-A-89(22)S) have all been determined to meet the exclusionary requirements of Section 1105(c)(1) of the Tax Law.

Since the report prepared by the Petitioner represents a collection of data derived from testing, investigating and evaluating specific materials designated by the client, the sale of such report in written form constitutes the rendering of an information service within the meaning and intent of Section 1105(c)(1) of the Tax Law.

Because the report pertains only to the particular materials designated by the particular client, the report is considered to be uniquely personal or individual in nature, thus satisfying the first condition required for exclusion from taxation pursuant to Section 1105(c)(1) of the Tax Law.

The second condition for exclusion mandates that the information may not be substantially incorporated in reports furnished to other persons. The report furnished to the client meets this condition in that the data and analysis contained in the report is furnished only to the client, and is not furnished to other persons not specifically designated by the client.

Therefore, as the report furnished to the client meets the criteria required under the exclusionary clause of Section 1105(c)(1) of the Tax Law, as further illustrated by the section of the Regulations and the opinions cited above, such report constitutes a non-taxable information service.

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Accordingly, the amount of the charge for the "Non-Destructive Testing" report is considered to be a receipt from the sale of a non-taxable information service and is not subject to state or local sales tax.

It is further noted that the furnishing of technical advice by a licensed professional engineer is not deemed to be the sale of tangible personal property or the sale of an enumerated service even if a written report is furnished as an incident to the engineering service being performed. Such a professional service is outside the scope of the sales tax.

Accordingly, to the extent that the services rendered by Petitioner constitute the rendering of technical advice by a licensed professional engineer, the charge for said services is not subject to sales or use tax. (R.H. McDermott Corp., Adv Op Comm T & F, March 2, 1988, TSB-A-88(22)S.)

It must be emphasized that this opinion as it relates to engineering services is limited to the tax status of reports and documents (e.g., evaluations, specifications, tests and analysis) which being based upon the principles of mathematics and the physical sciences, may legally be rendered only by licensed professional engineers. Opinion of Counsel, 1966 NYTB-2, p. 58.

DATED: February 15, 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.