

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

TSB-A-92 (19) S
Sales Tax
March 6, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920103B

On January 3, 1992, a Petition for Advisory Opinion was received from Advanced Technology Laboratories, Inc., 701 Fifth Avenue, Suite 6800, Seattle, WA 98104-7019.

The issue raised by Petitioner, Advanced Technology Laboratories, Inc., is whether the sale of equipment used to produce video cassettes which contain ultrasound images is exempt from sales and use taxes as production equipment under Section 1115(a)(12) of the Tax Law.

Petitioner manufactures and sells diagnostic imaging systems using ultrasound technology. The systems address all major segments of the market for ultrasound imaging equipment, including radiology, cardiology, obstetrics and gynecology, and peripheral vascular diagnosis.

Petitioner has customers that are imaging centers. Patients are referred to centers by their physicians. These centers use a variety of approaches to imaging depending on the specific need and condition of a patient. Images are captured on various media and given to the patient or sent directly to physician. When used in this type of setting, such equipment produces video cassettes which contain ultrasound images. The ultrasound images are used solely for diagnostic purposes.

Section 1115(a)(12) of the Tax Law exempts "machinery and equipment for use or consumption directly and predominantly in the production of tangible personal property. . . for sale, by manufacturing. . ." from the imposition of sales tax.

The investment tax credit for Personal Income Tax purposes was allowed under Section 606(a) of the Tax Law to a taxpayer operating in a manner similar to Petitioners' customers. (Albany Equipment Management Associates, Adv Op Comm T & F, TSB-A-88-(10)I. However, while the investment tax credits under the Personal Income Tax and Franchise Tax on Business corporations are similar for machinery and equipment to the sales tax exemption for machinery and equipment, the sales tax exemption set forth in Section 1115(a)(12) of the Tax Law contains an additional requirement not found in the investment tax credit sections. The tangible personal property produced must be "for sale."

This distinction has been applied to snow making equipment. The Tax Commission allowed the investment tax credit (Matter of Plattskill Mountain Ski Center, Inc., Dec St Tax Comm, March 9, 1984, TSB-H-85(28)C), but did not allow the sales tax exemption (Matter of Shanty Hollow Corp., Dec St Tax Comm, March 9, 1984, TSB-H-84(60)S). The Decision of the State Tax Commission was affirmed by the Appellate Division in Shanty Hollow v. New York State Tax Commission, 111 A.D. 2d 968.

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In Segal Equipment Associates, Adv. Op Comm T&F, March 12, 1990, TSB-A-90(9)S, the Commissioner advised that a "CAT-SCAN" machine which produced tangible images for diagnostic purposes did not qualify for exemption from sales tax under Section 1115(a)(12) of the Tax Law.

Section 1115(a)(3) of the Tax Law, however, provides exemption from tax on retail sales of the following:

(3) Drugs and medicines intended for use, internally or externally, in the cure, mitigation, treatment or prevention of illnesses or diseases in human beings, medical equipment (including component parts thereof) and supplies required for such use or to correct or alleviate physical incapacity, and products consumed by humans for the preservation of health but not including cosmetics or toilet articles notwithstanding the presence of medicinal ingredients therein or medical equipment (including component parts thereof) and supplies, other than such drugs and medicines, purchased at retail for use in performing medical and similar services for compensation. (emphasis added)

Section 528.4(e)(1) of the Sales and Use Tax Regulations defines the term "medical equipment" to mean:

(e) Medical equipment. (1) Medical equipment means machinery, apparatus and other devices (other than prosthetic aids, hearing aids, eyeglasses and artificial devices which qualify for exemption under section 1115(a)(4) of the Tax Law), which are intended for use in the cure, mitigation, treatment or prevention of illnesses or diseases or the correction or alleviation of physical incapacity in human beings. (emphasis added)

Accordingly, since Petitioner's customers are using the imaging machines to provide a diagnostic service and not for the production of tangible personal property for sale, pursuant to Segal Equipment Associates, supra, the imaging machines do not qualify for exemption from sales tax under Section 1115(a)(12) of the Tax Law. The imaging machines do, however, constitute medical equipment pursuant to Section 1115(a)(3) of the Tax law and Section 528.4(e)(1) of the Sales and Use Tax Regulations and thus the receipts from the sale of such machines by Petitioner are exempt from sales and use taxes unless purchased at retail for use in performing medical and similar services for compensation.

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It is noted that sales of imaging machines to exempt organizations as defined in Section 1116(a) of the Tax Law are exempt from the impositions of sales tax.

DATED: March 6, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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