

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

TSB-A-97(51)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940930B

On September 30, 1994, a Petition for Advisory Opinion was received from Scientific Services S/D, Inc., 41 Main Street, P.O. Box 778, Sparrow Bush, N.Y. 12780.

The issues raised by Petitioner, Scientific Services S/D, Inc., are:

1. Whether Petitioner is required to collect sales tax on the receipts from charges to clients for product testing services and the subsequent reports issued to the clients reflecting the results of the product testing;
2. Whether Petitioner's sales of research materials (i.e., dust-sebum and ground-in-clay soiled swatches and special soils and stains for testing bleaches and other laundry additives) are subject to the sales tax imposed on receipts from sales of tangible personal property under section 1105(a) of the Tax Law; and
3. Whether Petitioner's purchases of tangible personal property for use in providing research and development services for clients qualify for the exemption from sales tax imposed on retail sales of tangible personal property provided under section 1115(a)(10) of the Tax Law.

Petitioner makes the following submission of facts.

Petitioner provides consulting and testing services to the detergent, household product and chemical specialty industries. Petitioner provides services with respect to products including detergents, laundry additives, polishes, cleaners, household specialties, cosmetics, personal care products and over the counter drugs.

With respect to detergent items, Petitioner's laboratory tests both finished and experimental formulations for performance using ASTM and CSMA protocols. Terg-0-Tometer and washing machine tests are frequently run. Petitioner tests automatic dishwasher detergents and hard surface cleaners. Petitioner formulates products.

Petitioner makes dust-sebum and ground-in-clay soiled fabric swatches for use by clients in performing detergency research in the client's own laboratories. Petitioner also makes special soils and stains for testing bleaches and other laundry additives. Petitioner provides similar services for customers interested in cosmetic, household products and chemical specialties.

The confidential reports issued by Petitioner are based upon data compiled by Petitioner's laboratory technicians during various tests performed on products submitted by clients.

Most of Petitioner's clients are outside New York State.

Petitioner purchases items of tangible personal property for use in providing services to clients. Typical purchases made by Petitioner for use in providing the services are as follows:

Rental of deionizer for treating waste for laundering research
Reagents
Laboratory tools and equipment
Stationery and computer supplies for written reports
Materials for soiling and staining
Cloth and clothing for soiling and cleaning projects

Section 525.2(a)(3) of the Sales and Use Tax Regulations states that "[t]he 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 . . . "

Section 1105 of the Tax Law states, in part:

Imposition of sales tax.--...there is hereby imposed and there shall be paid a tax . . . upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

Section 1115 of the Tax Law states, in part:

Exemptions from sales and use taxes.--(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(10) Tangible personal property purchased for use or consumption directly and predominantly in research and development in the experimental or laboratory sense. Such research and development shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects.

Section 528.11 of the New York State Sales and Use Tax Regulations states, in part:

Research and development. [Tax Law, Section 1115 (a) (10) and Section 1115 (b) (ii)] (a) Exemption. (1) The sale of tangible personal property purchased for use or consumption directly and predominantly in research and development in the experimental or laboratory sense is exempt from the sales and use tax.

* * *

(4) An Exempt Use Certificate (Form ST-121) is used to make purchases eligible for this exemption, without payment of sales tax.
. . .

(b) Research and development. (1) Research and development, in the experimental or laboratory sense, means research which has as its ultimate goal:

- (i) Basic research in a scientific or technical field of endeavor;
- (ii) advancing the technology in a scientific or technical field of endeavor;
- (iii) the development of new products;
- (iv) the improvement of existing products; and
- (v) the development of new uses for existing products.

(2) Research and development in the experimental or laboratory sense does not include:

- (i) testing or inspection of materials or products for quality control . . . ;
- (ii) efficiency surveys;
- (iii) management studies;
- (iv) consumer surveys, advertising and promotions; and
- (v) research in connection with literary, historical or similar projects.

(c) **Directly, predominantly, exclusively.** (1) Direct use in research and development means actual use in the research and development operation. Tangible personal property for direct use would broadly include materials worked on, and machinery, equipment and supplies used to perform the actual research and development work. Usage in activities collateral to the actual research and development process is not deemed to be used directly in research and development.

(2) Tangible personal property is used predominantly in research and development if over 50 percent of the time it is used directly in such function.

(3) Tangible personal property is exempt only if it meets the tests of direct and predominant use.

Example 1: Test tubes, flasks, reagents, microscopes and slides purchased by a chemical manufacturer for its research laboratory for developing new pesticides are exempt from sales tax.

Example 2: Laboratory tables for use in a research laboratory are exempt, but desks and chairs used by clerical personnel are not used directly in research.

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Example 6: Paper on which research and development test results are recorded is exempt, but paper for in-house printing of a summary of research and development findings so that decisions may be made as to the marketability of the new products is taxable as the decision making activity is administrative.

Section 1105(c) of the Tax Law imposes tax on the receipts from the sale of certain enumerated services. A service which is not one of the enumerated services in Section 1105(c) is not subject to sales or compensating use tax. The product testing service and related sale of the reports of the analysis do not constitute an enumerated taxable service under Section 1105(c) of the Tax Law. Receipts from the product testing service and sale of these reports, therefore, are not subject to sales or compensating use tax. See Taxability of Certain Laboratory Reports, TSB-M-95(8)S.

Petitioner's receipts from sales of tangible personal property (i.e., dust sebum and ground-in-clay soiled fabric swatches and special soils and stains) to clients for use by clients in their laboratories will be subject to the sales tax imposed on sales of tangible personal property under section 1105(a) of the Tax Law when the transfer of the tangible personal property takes place within New York State (see Section 525.2(a)(3) of the Sales and Use Tax Regulations). However, if in accordance with Section 1115 (a) (10) of the Tax Law the tangible personal property is for use or consumption directly and predominantly in research and development in the experimental or laboratory sense, Petitioner will not be required to collect the sales tax imposed on receipts from the sale of tangible personal property under section 1105(a) of the Tax Law, provided the client gives Petitioner a properly completed exempt use certificate within 90 days of the transaction (see Section 1132(b) of the Tax Law and Section 532.4 of the Sales and Use Tax Regulations). Furthermore, Petitioner will not be required to collect the sales tax imposed on receipts from the sale of tangible personal property under section 1105(a) when delivery of the tangible personal property occurs outside New York State.

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Petitioners' purchases of reagents, laboratory tools and equipment, materials for soiling and staining, cloth and clothing for soiling and cleaning projects, stationery and computer supplies as well as the rental of a deionizer are purchases of tangible personal property. Purchases of tangible personal property generally are subject to the sales tax imposed on sales of tangible personal property under section 1105(a) of the Tax Law.

However, in the instant matter, Petitioner's purchases of the reagents, laboratory tools and equipment, materials for soiling and staining, cloth and clothing for soiling and cleaning projects, and the rental of a deionizer are all purchases which may qualify for the exemption from the sales tax imposed on receipts from sales of tangible personal property under section 1115(a)(10) of the Tax Law. To qualify for the exemption from sales tax under section 1115(a)(10) of the Tax Law, each item purchased by Petitioner must be used or consumed directly and predominantly (more than 50% of use) in research and development in the experimental or laboratory sense as discussed under section 528.11(b)(1) of the Sales and Use Tax Regulations.

If the service performed by Petitioner results in the development of a new product, the improvement of an existing product, or the development of a new use for an existing product, Petitioner will be performing research and development within the parameters of section 528.11(b)(1) of the Regulations. Accordingly, Petitioner's purchases of the items of tangible personal property enumerated above for use in performing research and development in the experimental or laboratory sense will qualify for the exemption from sales tax under section 1115(a)(10) of the Tax Law. However, when Petitioner's service is merely product testing that does not seek to achieve the goals enumerated under section 528.11(b)(1) of the Regulations, Petitioner's purchases of the items of tangible personal property enumerated above will not qualify for the exemption afforded under section 1115(a)(10) of the Tax Law but will be subject to the sales tax imposed on sales of tangible personal property under section 1105(a) of the Tax Law. Petitioner may make purchases of tangible personal property for use in research and development tax exempt by giving the supplier(s) a properly completed form ST-121, Exempt Use Certificate within 90 days of the purchase date.

Petitioner's purchases of stationery and computer supplies for use in preparing written reports for clients will be subject to the sales tax imposed on tangible personal property under section 1105(a) of the Tax Law since Petitioner is providing a service which is not subject to tax under section 1105(c) of the Tax Law.

DATED: August 25, 1997

/s/
JOHN W. BARTLETT
Deputy Director
Taxpayer Services Division

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