

**New York State Department of Taxation and Finance  
Office of Counsel  
Advisory Opinion Unit**

TSB-A-13(39)S  
Sales Tax  
October 22, 2013

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S120705C

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner inquires whether its performance of research and development services on behalf of its out-of-state parent, which result in reports or samples being delivered out-of-state, are subject to sales and use tax. We conclude that, even if the service is a taxable one, Petitioner's receipts from the service are not taxable since the service results in reports or samples being delivered to Petitioner's parent outside the State.

**Facts**

Petitioner is a producer of refractory products that are used mainly by manufacturers in various industrial high-temperature manufacturing applications. Petitioner has negotiated a contract with its parent company, which has its offices outside the United States. The contract requires Petitioner to perform research and development services exclusively for the parent company. The end products of the research and development are written communications and/or samples being shipped to the parent's offices outside the State. Petitioner will be reimbursed for the cost incurred while performing the research and development work, plus an additional 7% markup for these services.

**Analysis**

Sales of services are generally not taxable unless the Tax Law specifically enumerates them as taxable (Tax Law § 1105[b], [c]). Tax Law § 1105(c)(1) imposes tax on the sale of information services, "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." Furnishing a report of the results of scientific laboratory analysis can constitute an information service within the scope of section 1105(c)(1) (*see* TSB-A-95[8]S). However, research and development services in the laboratory sense to develop new products or perfect existing technologies are not taxable as information services even if a report is produced (*see Matter of Rochester Gas and Electric Corp.*, Tax Appeals Tribunal, Jan. 4, 1991).

The details in the petition are not sufficient to determine whether Petitioner's service is an information service or a nontaxable research and development service. It is not necessary, however, to resolve that issue here. Sales tax is a destination tax, such that "[t]he point of delivery or point at which possession is transferred by the vendor to the purchaser or designee

controls both the tax incidence and the tax rate.” Thus, because the reports and/or samples resulting from the service are sent to the customer outside New York, no New York sales and use tax would be due even if the transactions were taxable (*see* Sales Tax Reg. § 525.2[a][3]; *Matter of David Hazan, Inc. v. Tax Appeals Tribunal*, 152 A.D.2d 765, 766 [1989], *aff’d* 75 NY2d 989 [1990])

DATED: October 22, 2013

/S/  
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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.