TSB-A-17(23)S Sales Tax December 28, 2017

STATE OF NEW YORK COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. S160729A

The Department of Taxation and Finance received a Petition for Advisory Opinion from

Petitioner asks about the proper sales tax treatment of the consideration it receives for providing non-transplantable human tissue to medical facilities and laboratories for use in medical research and training. We conclude that such sales are not subject to State and local sales and use tax.

Facts

Petitioner operates a non-transplantable human tissue bank that provides services associated with the processing, storage, preparation and transportation of tissue specimen to clients for medical research and training purposes. Petitioner's customers include medical facilities, hospitals, universities, academic medical centers, medical training organizations and medical device manufacturers, among others. Petitioner receives donated human bodies shortly after the time of death in order to provide such customers with either complete, intact cadavers, or portions of human tissue according to its customers' specific needs associated with their training and research requirements. Petitioner makes no payments to a donor's estate or the donor's family for the donated remains. These donations are subject to legal consent and authorization from the donors and/or their next of kin. By donating to Petitioner, donors and their families are able to meet their own or loved ones' wishes to help support and further the advancement of scientific and medical research.

Petitioner's transfer of a specimen to its customers involves the following steps.

First, Petitioner must acquire the tissue specimen. This involves increasing public awareness of the services provided by Petitioner through the whole body donation process, developing contacts and relationships at hospitals, hospices and funeral homes, and preparing the necessary legal documents in order to conform to state laws related to whole body donation.

Second, Petitioner must preserve the tissue specimen. After the donation has occurred, Petitioner must arrange for the transportation of the body to one of its intake facilities. At that point shortly after the time of death, a number of tests must be conducted on the body to ensure that the tissue is safe and suitable for use by Petitioner's clients. From the time of death until the tissue is requested and supplied, proper storage, handling and preparation of the body is required. Services related to this storage and preparation process include embalming, latex injection, cold storage or flash freezing, suturing and formalin fixing. This process is critical in order to maintain the viability of any tissue for use by Petitioner's clients in their medical studies and test procedures. As a final part of this step, Petitioner's highly trained laboratory technicians prepare requested tissue to meet customer specifications.

Third, Petitioner must prepare the requested tissue specimen for delivery and transport it. This process includes the documentation of the tissue request from the medical agency, possible thawing of specific tissue related to that request, separation of a particular body part, testing of the tissue for suitability and then the shipment and/or delivery of that specific tissue to the customer. Shipment is done via vacuum sealed containers, dry ice and other similar provisions to ensure the preservation and security of the tissue in transit.

Analysis

The Tax Law imposes sales and use tax on retail sales of tangible personal property and the sale, except for resale, of certain enumerated services. *See* Tax Law § 1105(a), (b), and (c). Under New York law, "there is no right of property in a dead body . . . in the commercial sense." *Finley v. Atl. Transp. Co.*, 220 NY 249, 255 (1917). Accordingly, in transferring a tissue specimen to a medical facility or laboratory for medical research and training purposes, Petitioner is not making a sale of tangible personal property. Rather, it is performing a service, which involves removal, transportation, processing, preservation and storage of a human organ. Because this service is not one of the services made subject to sales tax, the consideration Petitioner receives for this service is not subject to sales tax.

DATED: December 28, 2017

/S/ DEBORAH R. LIEBMAN Deputy Counsel

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.