

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

TSB-A-81(17) S
Sales Tax
September 7, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810401D

On April 1, 1981 a Petition for Advisory Opinion was received from Cecos International, Inc., P.O. Box 619, Niagara Falls, New York 14302.

Petitioner is engaged in the business of removing, treating and disposing of non-safe chemical waste. Petitioner characterizes its business as "the manufacture and production of safe waste." Petitioner inquires as to: (1) whether receipts from the performance of its services are subject to sales tax; (2) whether its separately stated transportation charges, where independent carriers are utilized, are subject to sales tax; and (3) whether its purchase or rental of equipment and machinery utilized in its business is subject to sales tax.

Petitioner's service, within the context of the Tax Law, constitutes the service of trash removal, the receipts from which service are subject to tax pursuant to Section 1105(c)(5) of the Tax Law. That provision imposes a tax on receipts from the services of "maintaining, servicing or repairing real property . . .". Section 527.7(b)(2) of the Sales and Use Tax Regulations elucidates such statutory language by providing that: "All services of trash, garbage or debris removal are taxable, whether from inside or outside of a building, a construction site or vacant land." 20 NYCRR 527.7(b)(2).

Petitioner's contention that its receipts are exempt from tax by virtue of Section 528.13(d) of such Regulations is not well-founded. That provision does not relate to receipts from the service of trash removal, but to the purchase and use of certain waste treatment equipment.

The taxable receipts from the service of trash removal include that component denominated transportation charges, which amount represents Petitioner's cost of arranging for the transportation of its customers' waste materials by an independent carrier. The term "receipt" is defined as "The amount of . . . the charge for any [taxable] service . . ." and includes all of the components of such charge, including expenses for transportation. Tax Law, §1101(b)(3). The exclusion of separately stated transportation charges provided for in the cited provision of law relates solely to transportation charges applicable to the purchase of tangible personal property, and not to the purchase of the service of trash removal. Accordingly, Petitioner's separately stated transportation charges are includable in its taxable receipts.

Finally, Petitioner inquires as to the taxability of its purchase and rental of the machinery and equipment used in its operations. The Tax Law imposes a tax on the ". . . receipts from every retail sale of tangible personal property, except as otherwise provided in this article." Tax Law, §1105(a). The term "retail sale" includes a sale for any purpose other than resale. Tax Law, §1101(b)(4). The term "sale" is defined to include the rental or leasing of tangible personal property. Tax Law, §1101(b)(5). Accordingly, the receipts from Petitioner's purchase or rental of machinery and

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equipment used in its operations are subject to the sales tax imposed under Section 1105(a) of the Tax Law.

Petitioner contends that such purchases and rentals are exempt from tax by reason of Section 1115(a)(12) of the Tax Law, and the Regulations promulgated thereunder. Section 1115(a)(12) provides for an exemption with respect to machinery and equipment purchased ". . . for use or consumption directly and predominantly in the production of tangible personal property . . . for sale, by manufacturing, processing . . .". Section 528.13(d) of the Sales and Use Tax Regulations, cited by Petitioner, specifically provides for an exemption with respect to waste treatment equipment. However, this exemption is explicitly limited in its application to such equipment "purchased by a manufacturer." 20 NYCRR 528.13(d)(1)(i). "Manufacturer", within the context of Section 1115(a)(12) of the Tax Law, means one who is engaged in the production of tangible personal property for sale , by manufacturing. Even if Petitioner's characterization of its process as the "manufacture and production of safe waste" were tenable, such "manufacture and production" does not create a product produced for the purpose of sale. Accordingly, the exemption from sales tax provided for in Section 1115(a)(12) of the Tax Law is not applicable to Petitioner's purchase or rental of machinery or equipment. The receipts from such purchases and rentals are accordingly subject to tax.

DATED: August 19, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau