

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

TSB-A-90 (16)S
Sales Tax
April 16, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S891005A

On October 5, 1989 a Petition for Advisory Opinion was received from George Industries, Inc., One Page Street, Endicott, New York 13760.

The issue raised by Petitioner, George Industries, Inc., is whether the charges to it for the service of monitoring air for asbestos content and the issuing of reports of the findings thereof fall within the exclusion from tax provided under Section 1105(c)(1) of the Tax Law.

Petitioner entered into a contract with A & A Consulting and Inspection Services, Inc. (hereinafter referred to as "A & A") to perform an engineering study to determine the best way to proceed with asbestos removal. Petitioner subsequently entered into a separate contract with an unrelated third party to perform the removal of the asbestos. A & A also provided the service of taking air samples for the purpose of monitoring air quality (asbestos content) during the actual asbestos removal process and furnished Petitioner with reports concerning the results of such monitoring.

Section 1105(c) of the Tax Law imposes tax upon the receipts from every sale, except for resale, of certain enumerated services. The service of monitoring air is not one of the services enumerated under Section 1105(c) of the Tax Law and therefore such service is not subject to sales or use tax. However, Section 1105(c)(1) of the Tax Law imposes tax upon the receipts from every sale, except for resale, of the service of "[t]he furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, 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...."

Because A & A collected, compiled or analyzed information concerning air quality at Petitioner's location and furnished Petitioner a report or reports thereof, A & A is considered to have provided an information service. However, as the information provided in the reports only pertained to the asbestos content within the air at Petitioner's location, such information is considered to have met the requirement of being personal or individual in nature. Moreover, as the report was only furnished to Petitioner the requirement that the information is not or may not be substantially incorporated in reports furnished to other persons was also met.

Accordingly, the charges to Petitioner for the air monitoring service and the furnishing of reports thereof are not subject to New York State and Local Sales or Use Tax pursuant to Section 1105(c)(1) of the Tax Law as such charges are for the sale of information which falls within the exclusion from tax provided under said Section.

TSB-A-90 (16)S
Sales Tax
April 16, 1990

However the charges for the service of monitoring air for asbestos content and the issuing of reports of the findings may under some circumstances be subject to sales tax pursuant to Section 1105(c)(5) of the Tax Law.

Section 1105(c)(5) imposes a sales tax upon receipts from the services of "[m]aintaining, servicing or repairing real property. . .as distinguished from adding to or improving such real property, property or land, by a capital improvement as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one. . . ."

The service of asbestos removal by itself is a service subject to tax under Section 1105(c)(5) of the Tax Law. However, when the service of asbestos removal is performed as a constituent part of a capital improvement the charge for such removal is not subject to sales and use tax. (Oscar S. Rothaus, Adv Op Comm T & F, March 28, 1989, TSB-A-89(10)S.) It follows that the service of monitoring air for asbestos content during the removal of the asbestos from the premises and the issuing of reports of the findings of such monitoring is one aspect of the overall service of asbestos removal and thus is subject to tax under Section 1105(c)(5) of the Tax Law, even if the monitoring is done by a party other than the party physically removing the asbestos. However if the physical removal of the asbestos is performed as a constituent part of a capital improvement, then the monitoring service will be accorded similar treatment as a capital improvement.

It is further noted that the furnishing of technical advice by a licensed professional engineer is not deemed to be the sale of tangible personal property or the sale of an enumerated service even if a written report is furnished as an incident to the engineering service being performed. Such a professional service is outside the scope of the sales tax.

Accordingly, to the extent that the services rendered for Petitioner constitute the rendering of technical advice by a licensed professional engineer, the charge for said services is not subject to sales or use tax. (R.H. McDermott Corp., Adv Op Comm T & F, March 2, 1988, TSB-A-88(22)S; PCA Engineering, Inc., Adv Op Comm T & F, February 15, 1990, TSB-A-90(4)S.)

It must be emphasized that this opinion as it relates to engineering services is limited to the tax status of reports and documents (e.g., evaluations, specifications, tests and analysis) which being based upon the principles of mathematics and the physical sciences, may legally be rendered only by licensed professional engineers. Opinion of Counsel, 1966 NYTB-2, p. 58.

DATED: April 16, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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