

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

TSB-A-90(21)S
Sales Tax
April 16, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S900110A

On January 10, 1990 a Petition for Advisory Opinion was received from Ecologics Management Inc., 55 Mushroom Blvd., Rochester, New York 14623.

The issue raised is whether Petitioner, Ecologics Management, Inc.'s, service of hauling waste water and sludge for its customers is subject to sales tax under Section 1105(c)(5) of the Tax Law.

Petitioner is contracted, usually on an annual basis, by the generators of liquid waste to haul the product from the generator site to the disposal site, generally a municipal sewage treatment plant. The liquid waste consists of water and sludge which is a mixture of 96% to 98% water and 2% to 4% solids.

Petitioner's customers include municipalities, food processing plants, landfills which produce leachate water, and any others who produce biological waste water. At no time does title to the product pass from the generator to Petitioner, nor does the Petitioner pay the disposal site any fees. The Petitioner is directed in all cases as to which site for disposal has been chosen by the generator.

The equipment used by the Petitioner is tractors and trailers. The equipment is not special and can be utilized to haul a variety of products such as drinking water, milk, fuel or any type of liquid.

Petitioner has no financial arrangements with any disposal site and does not pay tipping fees, which in all cases is the responsibility of the generator. Petitioner in no way, treats or alters the product which is being transported. Tests and suitability of the material is performed by the generators to the satisfaction of the New York State Department of Environmental Conservation and the disposal facility.

Section 1105(c)(5) of the Tax Law imposes a sales tax upon the receipts from "Maintaining, servicing or repairing real property, property or land... whether such services are performed in or outside of a building...." Such section specifically includes "trash removal from buildings" as a service subject to tax.

The Courts have held that all aspects of trash removal are subject to tax and that it does not matter whether or not the trash was generated as a result of an industrial process. (See: Rochester Gas and Electric Corporation v. State Tax Commn., 126 AD 2d 238, affd 71 NY 2d 931 and Cecos International, Inc. v. State Tax Commn., 126 AD 2d 884, affd 71 NY 2d 934)

Both Rochester and Cecos involved the taxability of the transportation costs arising from the transportation of industrial waste products. In Rochester, the taxpayer was an energy producer which generated fly ash as a waste product of its energy production. In Cecos the company operated a landfill and waste treatment facility for the disposal of chemical waste. Both companies used

independent haulers to transport the waste from the waste generation location to the waste disposal location.

In these cases, the courts held that the transportation costs were not a nontaxable transportation service but were taxable pursuant to Tax Law Section 1105(c)(5) as "trash removal from buildings."

Accordingly, Petitioner's service of hauling waste water and sludge to treatment plants is subject to tax. However, Petitioner's sales of such services to governmental agencies are exempt pursuant to Sections 1116(a)(1), (2) and (3) of the Tax Law.

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.