

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

TSB-A-85(8)S
Sales Tax
May 15, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S840103A

On January 3, 1984 a Petition for Advisory Opinion was received from J.V. Aquavella M.D., and G.K. Jackson M.D. - Partners D/B/A Ophthalmic Lens Division, 919 Westfall Road, Rochester, New York 14618.

The issue raised is whether a computer system purchased for use in research and education in a medical field is subject to the New York State sales tax.

Petitioner describes the computer as a large system with a high technology medical language.

Petitioner contends that the computer system is used predominantly for "Research and Educational Purposes" in the Field of Ophthalmology, and only in a minor capacity for patient billing and scheduling.

Petitioner supplies examples and explanations of the various applications of data print out material in the medical area:

- Example (A) Slide catalog with retrieval function for storing patients medical histories, which are used as exhibits in lectures.
- Example (B) Medical record research program containing the charts of individual patient's diseases and treatment, the program aids in describing patient's cases.
- Example (C) Research manuscript recording the results of laboratory tests on animals.
- Example (D) Graphic displays useful in monitoring a patient's intra ocular pressure and the effect of drugs.

Petitioner fails to state what portion of the system's storage capabilities and operating time is applicable to each function.

Section 1105(a) of the Tax Law imposes a tax on "the receipts from every retail sale of tangible personal property, except as otherwise provided in this article." Section 1115(a)(10) provides an exemption for "tangible personal property purchased for use and consumption directly and predominantly in research and development in the experimental or laboratory sense".

The Sales and Use Tax Regulations, Section 528.11, provide the following definition: (b)(1) Research and development in the experimental or laboratory sense means research which has as its ultimate goal:

- (i) Basic research in a scientific or technical field of endeavor;
- (ii) Advancing the technology in a scientific or technical field of endeavor;
- (iii) The development of new products;
- (iv) The improvement of existing products;
- (v) The development of new uses for existing products.

(c)(1) Direct use in research and development means actual use in the research and development operation. Tangible personal property for direct use would broadly include materials worked on, and machinery, equipment and supplies used to perform the actual research and development work. Usage in activities collateral to the actual research and development process is not deemed to be use directly in research and development. (2) Tangible personal property is used predominantly in research and development if over 50 percent of the time it is used directly in such function. (3) Tangible personal property is exempt only if it meets the tests of direct and predominant use.

The use of the computer for patient billing and scheduling is not an activity for which an exemption is provided in the Tax Law. Computer usage in any of the capacities described in the foregoing examples (A), (B) and (D) does not constitute employment directly in research and development in the experimental or laboratory sense.

The preparation of manuscripts recording the results of laboratory tests constitutes direct use of the system in research and development.

However, unless the computer is used predominantly (more than 50%) in activities which qualify as research and development, it does not constitute property to which the exemption provided in Section 1115(a)(10) of the Tax Law is applicable.

DATED: April 24, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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