

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

TSB-A-86(43)S
Sales Tax
October 24, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S860730A

On July 30, 1986, a Petition for Advisory Opinion was received from Nancy E. Brayley, C.P.A., c/o Coopers & Lybrand, Two State Street, Suite 1000, Rochester, New York 14614.

The issue raised is whether the service of irradiating a core sample, thereby making it radioactive, is subject to sales tax.

In a transaction typical of the one at issue, Company X, who is in the business of analyzing core samples, after receiving a customer's sample requires that it be made radioactive to facilitate testing. Company Y performs the irradiation service, returning to Company X the radioactive sample accompanied by a written report stating date and duration of the radiation applied.

Company X then performs an analysis of the radioactive core and provides to its customers, for a fee, an information report describing the contents of the core sample. In accordance with Tax Law 1105(c) Company X does not collect sales tax from its customer on the charge for this report.

Petitioner inquires whether sales tax is due on the amounts billed by Company Y to Company X for the irradiation service.

Section 1101(3) of the Tax Law defines "receipt" as "[t]he amount of the sale price of any property and the charge for any service under this article, valued in money."

Section 1105(c)(2) of the Tax Law imposes a tax on the receipts from every sale, except for resale, of the services of "[p]roducing, fabricating, processing, printing or imprinting tangible personal property, performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale, upon which such services are performed."

Sales and Use Tax Regulation 527.4 explains further:

(d) "Processing is the performance of any service on tangible personal property . . . which effects a change in the nature, shape or form of the property."

(f) "When services enumerated in this section are rendered on property held for resale, the services are not taxable."

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Irradiation causes a change in the substance of the core sample, and therefore meets the definition of processing contained in the foregoing regulation section. Moreover, the radioactive sample is not intended for sale but for use by Company X in analyzing the contents of the core material.

Consequently, amounts billed by Company Y to Company X for irradiation of core samples are charges for processing services taxable under Section 1105(c)(2) of the Tax Law.

DATED: October 24, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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