

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

TSB-A-87(26.1) S
Sales Tax
July 29, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

MODIFIED ADVISORY OPINION PETITION NO. S870519A

On August 31, 1987, an Advisory Opinion was issued to Lockwood Support Services, Inc., 36 Karlan Drive, Rochester, New York 14617. On January 25, 1988, Lockwood Support Services, Inc. requested reconsideration of the Advisory Opinion issued on August 31, 1987.

Petitioner's basis for reconsideration are:

1. The initial Petition for Advisory Opinion did not adequately explain the services that the Petitioner renders.
2. Additional information for submission for support of a position that the Petitioner is exempt from sales tax not only under the informational service exception of the law as indicated in the first request for Advisory Opinion, but also as a profession.

The Advisory Opinion dated August 31, 1987 states that Petitioner is in the business of making aerial maps, surveys and charts. This conclusion was based upon the information contained in the Petitioner's original petition. However, Petitioner has submitted additional information regarding the nature of its business. Accordingly, this Modified Advisory Opinion is based upon the revised facts and circumstances described below.

Petitioner is engaged in the business of aerial photogrammetry, which is the art, science and technology of obtaining reliable information about physical objects and the environment through processes of recording, measuring and interpreting aerial photographic images and patterns of electromagnetic radiant energy and other phenomena. Petitioner states that its services are the same as those of a surveyor, only Petitioner uses aerial photographic information, not groundwork, for its services. Petitioner has on its staff licensed land surveyors and licensed professional engineers.

The following is a description of some of Petitioner's services:

1. Photo interpretation of soils, in engineering, forestry, wildlife management, range management, hydrology and watershed management, agriculture, urban area analysis, archaeology and geography.
2. Extension of vertical and horizontal geodetic control systems by analytical aerotriangulation. Through processes of mensuration, determination of plate coordinates, point transfer techniques and electronic data processing, ground control surveys are extended to photo-identifiable ground points for subsequent use in orientation of stereo-projections. This technique is particularly applicable to large

areas of rugged terrain with substantial relief, or to large urban areas where establishment of control on the ground is difficult and costly.

3. Stereo-photogrammetric compilation of aerial topographic surveys for:
 - (a) preparation of site plans and site grading plans, landscape architect plans for industrial development usage or for single or multi-family land development usage.
 - (b) determination of preliminary and final alignments for both primary and secondary roadways. Including readings of profiles and cross-sections. Surveys are also used for right-of-way acquisition, calculation of earthwork quantities and rendering of construction plans.
 - (c) inventory of various types of stockpiles, for example coal. Cross-sections are read photogrammetrically at prescribed intervals along a base line, the data is transferred to magnetic tape, introduced to data processing procedures and the volumetric data is therewith calculated, listed and graphically plotted.

Petitioner is retained on a periodic basis by three local power-generating companies to furnish volumetric data regarding their existing coal piles.
 - (d) engineering of transmission lines and pipelines for power, gas, and products. The aerial topographic survey is used for route selection, determination of PI locations, easement and right-of-way acquisition and legal description writing. Centerline profiles enable design engineers to determine structure heights, span lengths and clearance tolerances for final construction plans.
 - (e) engineering of sanitary sewer systems. Aerial topographic surveys, in strip map form, provide complete data for the design engineer to locate centerline, determine gradients, number of customers to hookup and serve, determine size of mains and laterals, location of lift stations, etc. These photogrammetric surveys are incorporated into plan/profile sheet sets of finished construction costs for bidding. The same surveys are used for preparation of "as-built" plans.
 - (f) engineering of reservoirs, dam sites, flood control programs. Aerial topographic surveys, most generally specified in a large-scale, small contour interval format for this particular application, provide the civil and hydraulic engineer adequate survey data to make a site selection for dam and spillways, design said dam and spillways, determine total acreage and water volume in the reservoir, calculate probable watershed runoff and determine flood stage

and normal reservoir pool. The topographic survey is also utilized in development of adjoining properties, including the engineering of sewage, water and road improvements.

Petitioner's clients do not normally receive the actual photographs used in this process. Instead, they receive a mylar survey. The survey is produced by a photogrammetrist using a stereo plotting machine. Film positive plates made from the original photographer's negatives are placed in the plate holders of the instrument. These plates are viewed stereoscopically by the photogrammetrist through zoom optics at up to ten times magnification. Through a series of adjustments, the plates in the instrument are recovered to precisely the same position and attitude in space as the position at the moment of exposure in the camera of the aircraft. This stereographic image of the earth's surface is then further adjusted to accurately conform to ground coordinate and elevation points that are supplied by a professional land surveyor. The result is a stereographic image that is precisely to scale in three dimensions and measurable.

Through a system of handwheel drives the photogrammetrist activates a floating measuring reference mark that conveys digital (coordinated) information to a computer.

In viewing the stereo model, the photogrammetrist selects and identifies the ground features to be shown at the various scales and also interprets elevation through contour lines on spot elevation.

The computer enhances this digital information using computer designed software and drives a plotting table, or drum-type plotter, to produce a line map or plan. Alternatively, the digital information is often recovered on magnetic tape or floppy disks, and such tapes or discs are finally delivered to engineers with CAD (Computer Aided Design) Systems.

Section 1105(a) of the Tax Law imposes a sales tax upon "It]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1105(c)(1) of the Tax Law imposes a tax upon the receipts from "The furnishing of information by printed, mimeographed or multigraphed matter...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..."

Article 28 (Sales Tax) does not specifically exempt or tax professional services. The construction of §1105(c) is such that unless a service is specifically subjected to tax, it is outside the scope of the tax and thus not subject to sales tax. The furnishing of a survey by a licensed professional surveyor is not deemed to be the sale of tangible personal property or the sale of an enumerated service even though tangible property (viz. the physical embodiment of the survey on paper or mylar) is furnished as an incident to the surveying service being performed.

Such a professional service is outside the scope of the sales tax.

In light of the additional information supplied by Petitioner, the advisory opinion issued on August 31, 1987 is modified as follows:

1. It is concluded that when Petitioner acts in the capacity of a licensed land surveyor pursuant to Education Law § 7203 or in the capacity of a licensed professional engineer pursuant to Education Law § 7201, such services are not subject to sales or use tax because such services are outside of the scope of the sales tax. This principle will apply whether Petitioner renders such a service for a client of Petitioner or as a subcontractor to a licensed professional engineer or licensed land surveyor.

2. It is concluded that when Petitioner provides reports (e.g. reports regarding inventory of coal) or survey data recorded on magnetic tape or floppy discs, Petitioner is providing an information service which is exempt from sales tax as long as the information furnished is personal or individual in nature and is not or may not be substantially incorporated in reports furnished by Petitioner to others.

3. It is concluded that to the extent that Petitioner makes sales of tangible personal property or information services which are not exempt surveys as described in conclusion number 1 above or are not an exempt information service as described in conclusion number 2 above, such sales are subject to sales and use tax. Examples of this would be aerial photographs or maps.

It is noted, however, that to the extent that any of Petitioner's customers furnish Petitioner with an appropriate exemption document (e.g. an exempt organization certificate or a United States or New York State government purchase order), Petitioner need not collect sales and use tax on such sale.

DATED: July 29, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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