

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

TSB-A-87(44)S  
Sales Tax  
November 12, 1987

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S861216B

On December 16, 1986, a Petition for Advisory Opinion was received from Datascope Corp., 3 Fir Court, Oakland, New Jersey 07436.

The issue raised is whether the compensating use tax is due on equipment capitalized and principally used for demonstration purposes by Petitioner's representatives in the field. Such equipment is subsequently sold in the normal course of business.

Petitioner manufactures and sells electronic medical monitoring equipment and disposable medical supplies. An inventory of Petitioner's products is provided to its sales and service representatives who transport this inventory to various customers in their sales and service territory. The sales representatives, upon visiting prospective or existing customers, demonstrate their products and take orders for them from their customers. These orders are then forwarded to Petitioner's home office in Paramus, New Jersey for acceptance and processing. The sales representatives generally carry a specific product in their inventory for an average period of two years. This equipment is capitalized on Petitioner's books as machinery and equipment and is subject to periodic depreciation.

After a sales representative has held the equipment for the two-year period, 80% of the equipment is recycled to inventory and sold to various customers. The remaining 20% is transferred to Petitioner's service representatives, who travel to customers who have requested service on their products. Ordinarily, a service representative will service a product at the customer's location. If the product cannot be repaired at the customer's location, then a similar item (from the service representatives stock) is loaned to the customer until the defective unit is repaired. Approximately 75% of the equipment is repaired at the time of the service call. The service representative holds the equipment in his stock for an average 3-year period, at which time approximately 90% of the equipment is placed in used equipment inventory and sold. The remaining 10% is written-off as outdated or excess inventory.

At the time any of Petitioner's equipment is sold, whether new or used, any applicable sales taxes is charged to Petitioner's customers.

It is Petitioner's contention that compensating use tax should not apply to the sales and service representatives equipment inventory, due to the following:

1. It is the intention of Petitioner that, when an item is manufactured, it will be subject to eventual sale. In reality, approximately 98% of all electronic equipment is eventually sold, with the remaining amount written off as obsolete inventory. Petitioner contends that a taxable transaction will occur at the time of eventual sale and not during the time the products are used for display purposes.

2. The equipment held by Petitioner's service representatives should also not be subject to compensating use tax. A large percentage of the service equipment inventory may remain in the service representatives possession for as long as six months without being used, and since this equipment is only being held or retained by the service representative, no taxable use occurs. Furthermore when these service items are eventually sold, they would be subject to the applicable sales tax.

Based on the above facts and circumstances, Petitioner respectfully requests an advisory opinion relating to the applicability of the compensating use tax to sales and service equipment inventories.

Section 1110 of the Tax Law imposes a compensating use tax on the use within this state of "any tangible personal property manufactured, processed or assembled by the user, if items of the same kind of tangible personal property are offered for sale by him in the regular course of business..." Section 1110 provides that the tax is computed based upon "the price at which items of the same kind of tangible personal property are offered for sale by the user." Section 1110 also provides that "the mere storage, keeping, retention or withdrawal from storage of tangible personal property by the person who manufactured, processed or assembled such property shall not be deemed a taxable use by him."

Paragraphs (1) and (3) of section 531.3(b) of the sales tax regulations contain additional information relative to Petitioner.

- (b) Tangible personal property manufactured, processed or assembled by the user.

- (1) A compensating use tax is imposed on the use of any tangible personal property which was manufactured, processed or assembled by the user, if items of the same kind of tangible personal property are offered for sale by him in the regular course of business.

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- (3) Where the user sells items of the same kind to other persons in the regular course of business, the basis of tax on the use of tangible personal property which is manufactured, processed or assembled by the user is the price at which such items are sold as evidenced by a price list, catalog price or record of sales. In the absence of a catalog price or price list, the average of the prices charged various customers will be deemed the price which the user would sell such item to the persons during the regular course of business.

TSB-A-87(44)S  
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The use by Petitioner's salesmen of equipment for demonstration purposes is a taxable use since such use goes beyond "mere storage, keeping, retention or withdrawal from storage" when Petitioner withdraws the equipment from inventory, capitalizes it on its books as machinery and equipment and depreciates it. Petitioner's intention to sell such equipment at some time in the future does not render the equipment any the less subject to the compensating use tax at the time of use by Petitioner's salesmen. Accordingly, equipment manufactured by Petitioner and used for demonstration purposes as described above is subject to the compensating use tax which is to be computed in accordance with section 531.3(b)(3) of the sales tax regulations.

DATED: November 12, 1987

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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