

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

TSB-A-92 (67) S
Sales Tax
September 21, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920721B

On July 21, 1992, a Petition for Advisory Opinion was received from Aacton, Inc., 414 Maple Avenue, Westbury, New York 11590.

The issue raised by Petitioner, Aacton, Inc., is whether the service of testing computer circuits is subject to sales and use taxes.

Petitioner is solely engaged in the testing of computer circuits. After circuits are manufactured, the circuits are sent to Petitioner for testing. The circuits that pass the test are then assembled by Petitioner's customers into products that will be later sold.

Petitioner's service is not part of quality control. Petitioner tests computer circuits for a variety of companies in a number of states, including some located in New York. Petitioner computer tests 100% of the circuits before they are assembled in products by its customers. Petitioner charges its customers based on the number of points on the circuit tested.

Section 1105(c)(3) of the Tax Law imposes sales tax, in part, on the servicing of tangible personal property which is not held for sale in the regular course of business.

Section 527.5 of the Sales and Use Tax Regulations provides, in part, as follows:

* * *

(3) Maintaining, servicing and repairing are terms used to cover all activities that relate to keeping tangible personal property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition.

* * *

Example 6: A company operates a diagnostic service in which it tests an appliance for a set fee, but does not repair the appliance. The charge for the diagnostic service is taxable.

(b) Exemptions. (1) The services of installing, maintaining, servicing or repairing tangible personal property are not taxable if the services were performed for resale. See section 526.6(c)(8) of this Title.

(2) Maintaining, servicing or repairing tangible personal property is not taxable if the property maintained, serviced or repaired is held for sale in the regular course of business.

Example 1: A repair shop charges a boat dealer for reconditioning boat motors which the dealer will resell. The reconditioning of the motors is not taxable because the motors are for resale. (emphasis added)

The computer circuits being tested by Petitioner will be assembled by its customers in products held for sale. Accordingly, pursuant to Section 1105(c)(3) of the Tax Law and Section 527.5 of the Sales and Use Tax Regulations since Petitioner is servicing tangible personal property which will subsequently be held for sale in a regular course of business, such testing of circuits is not subject to sales and use taxes provided a properly completed New York State Resale Certificate is received.

DATED: September 21, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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