

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

TSB-A-93 (13)S
Sales Tax
February 25, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S921104A

On November 4, 1992 a Petition for Advisory Opinion was received from T. M. Byxbee Company, CPA's, 21 Aviation Road, Albany, N.Y. 12205.

The issue raised by Petitioner, T. M. Byxbee Company, CPA's, is whether materials testing, research and development reports provided by Petitioner's client are subject to sales tax under Section 1105(c)(1) of the Tax Law.

Petitioner's client is a sole proprietorship which performs research and development in conjunction with other research and development firms in semiconductors, superconductors, metals and insulators. Petitioner's client is a researcher in Materials Science and Physics doing research in ion implantation, modification and analysis of Si and GaAs wafers, various metals, and superconductors. Petitioner's client rents accelerator time on low and high energy accelerators from either universities or other accelerator facilities. The samples come from R&D centers in this country and from abroad. The samples are implanted with the required ions from the accelerator with a fixed dose of energy, analyzed and returned to the sender. No final product is produced or sold as these are small samples used for R&D. Petitioner's client then sends a report of its findings to its customers. Although the samples are returned to the customer after the implantation, the samples have become useless and have no residual value.

Section 1105(c) of the Tax Law imposed a tax on the receipts from every sale, except for resale, of the following services:

(1) The furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, 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 (Emphasis added).

Section 527.3 of the Sales and Use Tax Regulations, states, in part, that:

(a) ... (2) The collecting, compiling or analyzing information of any kind or nature and the furnishing reports thereof to other persons is an information service.

(b) ... (2) The sales tax does not apply to the receipts from the sale of information which is personal or individual in nature and which is not or may not be substantially incorporated into reports furnished to other persons by the person who has collected, compiled or analyzed such information.

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The report prepared by Petitioner's client represents a compilation of data derived from analysis of a test sample. The sale of this report in written form, therefore, constitutes the rendering of an information service within the meaning and intent of Section 1105(c)(1) of the Tax Law and Section 527.3 of the Sales and Use Tax Regulations.

Since each sample is unique, as is the test result obtained from it, the report generated by the Laboratory is "personal or individual in nature", thus satisfying the first condition for exclusion from taxation as set forth in Section 1105(c)(1) of the Tax Law.

Furthermore, since the information is not substantially incorporated in reports to other persons, the second condition set forth in Section 1105(c)(1) of the Tax Law is satisfied. It is noted that if on request of the customer, Petitioner's client furnishes copies of the report to its customer's designees, such services will not negate the aforesaid exclusion. See St Tx Comm Declaratory Ruling 78-02, TSB-H-80(97)S; David J. Converse, St Tx Comm Adv Op, August 4, 1981, TSB-A-81(12)S.

Accordingly, the laboratory test reports sold by Petitioner's client which meet both criteria contained in the exclusionary clause of Section 1105(c)(1) of the Tax Law constitute the sale of a non-taxable information service.

DATED: February 25, 1993

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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