

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

TSB-A-93 (54)S  
Sales Tax  
October 5, 1993

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S930614A

On June 14, 1993 a Petition for Advisory Opinion was received from Morton L. Coren, P.C., 638 Meadow Court, Westbury, New York 11590.

The issue raised by Petitioner, Morton L. Coren, is whether Petitioner's client's services cleaning up toxic waste spills and sites are subject to sales tax and whether purchases used in providing such services are subject to sales tax.

Petitioner's client operates a business that cleans up toxic waste spills and sites. All work is performed within New York State. The toxic waste spills are generated by various events. The following are examples of such events:

- 1) A vehicle that is carrying toxic materials is involved in an accident that causes the release of toxic materials.
- 2) A vessel or motor vehicle releases toxic chemicals into the environment during the process of loading or unloading.
- 3) An industrial plant releases toxic chemicals into the environment during operation of the facility. The release may be the result of normal operations or caused by an accident.

Petitioner's client contracts to perform the clean up of such spills or sites. The work is performed on a time and material basis.

When a spill occurs, Petitioner's client is contacted and makes a preliminary evaluation of the situation and sends out its own equipment, personnel and supplies to the site. The personnel use the supplies and equipment to cure the problem. Usually absorbents are spread and collected and placed in containers. The New York State Department of Environmental Conservation determines the procedures to be followed. Petitioner's client never assumes title to the containerized waste. The law requires that the wastes remain the property of the generator of the waste. These containers are either delivered to a location specified by the customer or directly delivered to a disposal site. Many customers take possession of the containerized waste and make their own disposal arrangements. The absorbents and containers cannot be reused by Petitioner's client. In addition, the disposable uniforms used by the client's employees become contaminated and must be disposed of.

Petitioner's client provides equipment and supplies to be used during the clean up of toxic wastes. The equipment consists of booms that are used to contain oil spills, vacuum cleaners used to remove oil from water, and earth moving equipment to remove contaminated soil. The supplies

include disposable uniforms and other protective items, absorbent materials, and packaging materials such as drums which are used to contain the absorbents and waste.

Section 1101(b)(4)(i) of the Tax Law provides, in part, that:

A sale of tangible personal property to any person for any purpose, other than (A) or resale as such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3), (5), (7) and (8) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax (Emphasis Supplied)

Section 1105 of the Tax Law imposes sales tax upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

\* \* \*

(c) The receipts from every sale, except for resale, of the following services:

\* \* \*

(2) Producing, 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.

(5) Maintaining, servicing or repairing real property, property or land, as such terms are defined in the real property tax law, whether the services are performed in or outside of a building, as distinguished from adding to or improving such real property, property or land, by a capital improvement as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter, but excluding services rendered by an individual who is not in a regular trade or business offering his services to the public.

The service of cleaning up toxic waste and processing it is subject to the sales tax imposed under Sections 1105(c)(2) and (c)(5) of the Tax Law. (See: Cecos International, Inc. v. State Tax Commission, 126 A.D. 2d 884, affd 71 N.Y.934) Therefore, Petitioner's client must collect sales tax on such services.

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There are no exemptions in the Sales Tax Law for the purchasing or leasing of equipment used to clean up toxic wastes. Therefore, if Petitioner's client uses equipment such as booms, vacuum cleaners, and earth moving equipment in providing its services, it would be required to pay sales tax on the purchase or rental of such equipment.

Petitioner's client is not considered to be reselling drums, absorbents or packaging material to its customers, but is considered to be the ultimate consumer of such items and thus the purchase of such items are subject to sales tax. (See: Marine Pollution Control TSB-A-91(45)S.) However, in those instances where petitioner's client's customers retain ownership and legal responsibility for the toxic waste, the drums, absorbents, and packaging would be considered to be actually transferred to such customer and as such may be purchased for resale by Petitioner's client. (See: Chem-Nuclear Systems, Inc. TSB-D-89(2)S.) The items used by Petitioner's client such as protective gear and disposable uniforms are not transferred along with the service and are thus subject to sales tax whether or not Petitioner's client's customers retain ownership of the waste product.

DATED: October 5, 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.