

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

TSB-A-84(27)S
Sales Tax
October 15, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO.S820426B

On April 26, 1982, a Petition for Advisory Opinion was received from FMC Corporation, 200 East Randolph Drive, Chicago, Illinois 60601.

The issue raised is whether charges for the service of picking up containers of chemical waste and delivering the same to a waste treatment and disposal company is subject to sales tax.

Petitioner operates an agricultural chemical manufacturing facility. The process employed by Petitioner to manufacture insecticides and fungicides creates certain chemical wastes which Petitioner places in special containers leased from Niagara Sanitation Co., Inc. Niagara Sanitation Co., Inc. picks up the filled containers at Petitioner's location and delivers the contents to an independent company which treats and disposes of chemical wastes. This independent company directly invoices Petitioner for its services.

Niagara Sanitation Co., Inc. invoices Petitioner for the container rentals and for the pickup and delivery services. The charges for the container rentals and for the pickup and delivery services are separately stated on the invoice presented to Petitioner. Petitioner is billed sales tax on the total charges for both the container rentals and the pickup and delivery services.

Section 1105(c)(5) of the Tax Law imposes a tax on receipts from the sale of the service of "maintaining, servicing or repairing real property," including the service of trash removal. The term "trash removal" is not defined in the statute or the Sales and Use Tax Regulations. However, it is manifestly clear from its inclusion in a tax on the service of real property maintenance that it has to do, simply, with the removal of trash from real property. It is not necessarily related to the treatment or disposal of trash. Indeed, receipts from the provision of such service in and of themselves are not subject to tax. Accordingly, in the present instance, the service provided by Niagara Sanitation Co., Inc., consisting of the removal of waste from the real property of Petitioner, constitutes the service of trash removal the receipts from which are subject to tax.

DATED: September 2, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau