

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

TSB-A-86(47)S
Sales Tax
December 1, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S860722A

On July 22, 1986, a Petition for Advisory Opinion was received from BDT Inc., 4255 Research Parkway, Clarence, New York 14031.

The issues raised are: (1) whether Petitioner is required to pay tax on its purchases of machinery, equipment and supplies used for processing waste; (2) whether Petitioner's charges to its customers are subject to tax; and (3) whether charges to Petitioner for waste and residue sent off site are subject to tax.

Petitioner operates a hazardous waste treatment facility. There are two methods used, incineration and hydrolysis. Petitioner is not a disposal facility, instead all waste and residue generated from these processes are either solids in drums or bulk liquids which are sent off for disposal and or further treatment. Nothing is re-claimed.

Petitioner describes its machinery and equipment as follows:

1. New motors, blowers, fans, pumps, conveyors etc. used in the treatment process.
2. Chemicals added to the hydrolysis process to aid in reacting or neutralizing the waste being treated.
3. Safety equipment worn by operators such as coveralls, gloves, helmets, glasses, and respirators.
4. Safety and monitoring equipment connected to the treatment processes which measures the presence and amount of dangerous gases, monitors and measures emissions, sounds alarms and shuts down equipment during high level periods.
5. Machinery equipment and supplies for research and development in the laboratory sense. Over the years BDT has expanded from treating batteries exclusively to approximately 600 compounds presently. The laboratory will accept small experimental quantities of a new material and perform tests to determine acceptability, type of treatment process, feed rates, dangers etc. Once accepted, larger quantities are accepted for treatment. The chemistry laboratory performs this function (over 50%) and also quality assurance testing on incoming material.

Waste in drums is brought to Petitioner from customers within New York State and outside New York State. Petitioner will accept waste delivered to it by its customers or Petitioner will provide transportation.

The services purchased by Petitioner are the hauling of solids in drums, hauling liquid bulk waste in a vac truck, treatment of waste liquids and landfill charges for drum waste. Petitioner is provided with these services individually or as a combination of several.

Issue (1)

Section 1115(a)(12) of the Tax Law exempts from sales tax the receipts from the sale of "Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property...for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting...but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus." Section 1105-B of the Tax Law provides for the elimination of State sales tax on receipts from sales of parts with a useful life of one year or less, as well as tools and supplies, for use or consumption directly and predominantly in production, as described above.

The Sales and Use Tax Regulations provide the following definitions, applicable herein: "'Production' includes the production line of the plant starting with handling and storage of raw materials at the plant site and continuing through the last step of production where the product is finished and packaged for sale." 20 NYCRR 528.13(b)(1)(ii). "'Directly' means the machinery or equipment must, during the production phase of a process, (i) act upon or effect a change in material to form the product to be sold, or (ii) have an active causal relationship in the production of the product to be sold, or (iii) be used in the handling storage, or conveyance of materials or the product to be sold, or (iv) be used to place the product to be sold in the package in which it will enter the stream of commerce....Usage in activities collateral to the actual production process is not deemed to be use directly in production." 20 NYCRR 528.13(c).

The Sales and Use Tax Regulations treat the subject of waste treatment equipment as follows: "Machinery and equipment used for disposing of industrial waste, as a part of a process for preventing water or air pollution, will be considered as being used directly and predominantly in production by manufacturing, processing, generating, assembling, refining, mining or extracting if: (i) the machinery and equipment is purchased by a manufacturer and used predominantly to actually treat, bury, or store waste materials from a production process, and (ii) over fifty percent of the waste treated, buried or stored results from the production process." (Emphasis added). 20 NYCRR 528.13(d)(1).

Inasmuch as Petitioner is not engaged, either directly or as a subcontractor, in the production of tangible personal property for sale it is not a manufacturer within the meaning and intent of 20 NYCRR 528.13(d). Consequently, the machinery, equipment and supplies at issue herein do not constitute machinery, equipment and supplies used in production, and the receipts from the retail sale thereof to Petitioner do not qualify for the exemption from sales tax provided under sections 1115(a)(12) and 1105-B of the Tax Law.

Section 1115(a)(10) of the Tax Law exempts from tax, "Tangible personal property purchased for use or consumption directly and predominantly in research and development in the experimental or laboratory sense. Such research and development shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical or similar projects."

Section 528.11(b)(1) the sales tax regulations further defines research and development as follows:

(b) Research and development. (1) Research and development, in the experimental or laboratory sense, means research which has as its ultimate goal:

- (i) basic research in a scientific or technical field of endeavor;
- (ii) advancing the technology in a scientific or technical field of endeavor;
- (iii) the development of new products;
- (iv) the improvement of existing products; and
- (v) the development of new uses for existing products.

Testing waste and residue to determine whether or not Petitioner's waste treatment facility can process its customers wastes is not one of the purposes for which an exemption is allowed under 1115(a)(10) of the Tax Law.

Issue (2)

Section 1105(c)(2) of the Tax Law imposes a tax upon the receipts from "[p]roducing, 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."

Section 1105(c)(5) of the Tax Law imposes a tax upon the receipts from the services of "maintaining, servicing or repairing real property...." Section 527.7(b)(2) of the Sales and Use Tax Regulations further explains that: "All services of trash, garbage or debris removal are taxable, whether from inside or outside of a building, a construction site or vacant land." 20 NYCRR 527.7.

Petitioner's services of treatment of the hazardous waste of its customers constitute the services of processing tangible personal property, the receipts from which services are subject to tax pursuant to section 1105(c)(2) of the Tax Law. Cecos International, Inc. Decision of the State Tax Commission, January 3, 1986, TSB-H-86(16)S.

TSB-A-86(47)S
Sales Tax
December 1, 1986

Petitioner's services of providing transportation of its customer's hazardous waste to Petitioner's facility constitute the services of trash removal, the receipts from which service are subject to tax pursuant to Section 1105(c)(5) of the Tax Law. Cecos International Inc., supra.

The taxable receipts from the service of trash removal include that component denominated transportation charges, which amount represents Petitioner's cost of arranging for the transportation of its customers' waste materials. The term "receipt" is defined as "The amount of . . . the charge for any [taxable] service . . ." and includes all of the components of such charge, including expenses for transportation. Tax Law, 1101(b)(3).

Issue (3)

Section 526.6(c) of the Sales Tax Regulations provides:

"Where a person, in the course of his business operations, purchases tangible personal property or services which he intends to sell, either in the form in which purchased, or as a component part of other property or services, the property or services which he has purchased will be considered as purchased for resale, and therefore not subject to tax until he has transferred the property to his customer."

Since Petitioner is selling a service subject to tax under 1105(c)(5) of the Tax Law, he may purchase for resale those services (waste sent off-site) which become a component part of that service. Accordingly, those services purchased for resale are not subject to tax.

DATED: December 1, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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