

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

TSB-A-89(22)S
Sales Tax
July 25, 1989

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO: S890329B

On March 29, 1989 a Petition for Advisory Opinion was received from Garden Way Incorporated, 102nd Street and 9th Avenue, Troy, N.Y. 12180.

The issue raised is whether Petitioner is required to pay sales tax on charges for product testing services and subsequent reports reflecting the results of such product testing or whether the charges are for the purchase of information services which are not subject to state or local sales and use taxes pursuant to the exclusion provided for in section 1105(c)(1) of the Tax Law.

Petitioner is a manufacturer and retailer of garden and lawn equipment. During 1985 Petitioner engaged the services of a Florida company, Sassaman Enterprises, Inc. for the purpose of testing a line of power mowers manufactured and sold at retail by Petitioner.

Test operators, who were employees of Sassaman Enterprises, Inc., operated Petitioner's products, the Tuff Cut 22" and Tuff Cut 24" lawnmowers, for several hours at a time for a period of approximately ten weeks. The operation of the lawnmowers was also observed by a foreman and a mechanic. All of these individuals recorded their daily observations in confidential operating logs. Weekly test log summaries were also prepared. The data, observation reports and the lawnmowers were then forwarded to Petitioner for use in Petitioner's product research and development.

Sassaman Enterprises, Inc. presented Petitioner itemized billings which indicated the total hours, hourly rates and the total amounts charged for the test operators, foreman, mechanic, administration and reports, and overtime premium. The billings also reflected separate charges for fuel and oil, and for UPS shipping charges.

The reports received were based upon data compiled by Sassaman Enterprises, Inc. during the course of operating and observing petitioner's product. The reports relate to specific products and are highly confidential. Petitioner states that the data and analysis contained in the reports is kept secret pursuant to an agreement between Petitioner and Sassaman Enterprises.

Section 526.5 of the Sales and Use Tax Regulations provides:

Receipt [Tax Law, §1101 (b)(3)]

(a) Definition. The word receipt means the amount of the sale price of any property and the charge for any service taxable under articles 28 and 29 of the Tax Law, valued in money, whether received in money or otherwise. The following subdivisions of this section discuss elements of a receipt.

* * *

(e) Expenses. All expenses ... incurred by a vendor in making a sale, regardless of their taxable status and regardless of whether they are billed to a customer are not deductible from the receipts. 20 NYCRR 526.5.

Section 1105(c) of the Tax Law imposes sales tax on "[t]he 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 provides:

(a) Imposition

(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) Exclusions.

(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. 20 NYCRR 527.3.

Whereas the reports prepared by Sassaman Enterprises Inc. represent a collection of data derived from an operating analysis of Petitioner's Tuff Cut 22" and Tuff Cut 24" lawnmowers, the sale of such reports in written form constitutes the rendering of an information service within the meaning and intent of Section 1105(c)(1) of the Tax Law.

Because the reports pertain only to products manufactured by Petitioner, the reports are considered to be uniquely personal and individual in nature, thus satisfying the first condition required for exclusion from taxation. (Tax Law §1105(c) (1), supra).

The second condition for exclusion mandates that the information may not be substantially incorporated in reports furnished to other persons. The reports furnished to Petitioner meet this condition in that the data and analysis contained in the reports is kept secret and confidential pursuant to an agreement between Petitioner and Sassaman Enterprises, Inc.

Moreover, as the reports furnished to Petitioner meet the criteria required under the exclusionary clause of Section 1105(c)(1) of the Tax Law, such reports constitute a non-taxable information service. Accordingly, the total amounts charged to Petitioner (including the separately

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stated charges for test operators, the foreman, the mechanic, overtime, fuel and oil, UPS, administration and reports) are considered to represent the total receipts for such non-taxable information service and are not subject to state or local sales tax. Re Fortunato Sons Inc., Advisory Op St Comm, July 28, 1986, TSB-A-86(30)S.

DATED: July 25, 1989

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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