

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

TSB-A-96 (60)S
Sales Tax
September 23, 1996

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S950118A

On January 18, 1995, a Petition for Advisory Opinion was received from Aqua King International, Inc., Post Office Box 7, Poughkeepsie, New York 12602-0007.

The issues raised by Petitioner, Aqua King International, Inc. are:

- (1) Whether receipts from charges for performing water testing are subject to sales tax.
- (2) Whether using different methods for conducting water testing, according to specific instructions received by Petitioner, changes the taxable status of water testing services.

Petitioner submits the following facts.

Petitioner indicates that water testing is required pursuant to various Federal, State and local mandates. Water testing for bacteria, lead, iron, nitrates, pH, chlorine, organics\inorganics, pesticides, etc. is required by home buyers or sellers and all public water suppliers. Private parties may require testing for a variety of reasons. For instance, potability tests may be a condition for sale of a residence or a homeowner may want to test the potability of his or her well. A bank or lending institution may also require testing. Tests can range from chlorine testing to microbiological testing, from aesthetic contaminant testing to hazardous contaminant testing. Petitioner indicates that the Public Health Law requires the tests to be performed by a State laboratory or a State certified laboratory and that the Environmental Protection Agency, the State Health Department and laboratories establish strict guidelines governing the collection of samples.

Petitioner collects the necessary samples and performs the tests described above for its clients, or in some cases hires an outside laboratory to perform the tests. In general, the testing done by Petitioner is required by local, State or Federal mandate. After testing is completed, Petitioner will furnish a written report indicating the test results to its clients. The reports do not include any interpretation of the test results or recommendations, other than a comparison of the test results to an established norm.

Section 1105(c) of the Tax Law imposes sales tax on receipts from the sale of certain enumerated services. If a service is not one of these enumerated services, it is not subject to tax.

In this case, Petitioner tests water for various purposes, such as to determine its potability from a well for drinking purposes, to fulfill State, local and Federal requirements in order for individuals or businesses to begin construction of buildings for occupancy, or to confirm that public water supplies meet pre-determined standards established by the Public Health Law. The results

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of such tests are given to Petitioner's clients in a report. The report does not include any interpretation of the test results or recommendations, other than comparisons of the test results with established norms. The testing of the water samples and the subsequent issuing of reports to Petitioner's clients are not among the enumerated services subject to sales tax under Section 1105(c) of the Tax Law. Accordingly, receipts from the sale of the testing services and reports are not subject to sales tax. This is true regardless of the method used to conduct the tests. See Taxability of Certain Laboratory Reports, TSB-M-95(8)S.

It should be noted that Petitioner's purchases of laboratory testing services from outside laboratories are not subject to tax. However, purchases by Petitioner of chemicals and equipment for use in conducting its tests are subject to sales and compensating use tax.

DATED: September 23, 1996

/s/
JOHN W. BARTLETT
Deputy Director
Technical Services Bureau

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