

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

TSB-A-97(63)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S970715C

On July 15, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from Safe Systems Corporation, 21 Walker Way, Albany, NY 12205.

The issues raised by Petitioner, Safe Systems Corporation, are:

- (1) Whether the service of consulting with a company and providing training for establishing an internal drug and alcohol testing program is subject to New York State Sales Tax.
- (2) Whether, in addition to (1), the writing of policies for a company regarding drug and alcohol testing is subject to New York State Sales Tax.
- (3) Whether, in addition to (1) and (2) above, the collection of samples from a company's employees by certified technicians at mobile units, or at clinics, for testing at an independent laboratory is subject to New York State Sales Tax.
- (4) Whether, in addition to (1), (2) and (3) above, the service of delivering laboratory reports and communicating test results to a company is subject to New York State Sales Tax.
- (5) Whether, in addition to (1), (2), (3) and (4) above, handling all record keeping and management of information necessary for a company to complete Federal DOT Audit Reports on Drug and Alcohol testing is subject to New York State Sales Tax.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner provides the service of assisting businesses in establishing and complying with internal drug and alcohol testing programs. In many cases the testing is Federally mandated.

The initial services consist of consultation with respect to implementing an internal testing program, writing company policies and training company employees.

Petitioner also helps many companies implement their internal testing program by the provision of ongoing consulting services; collection of samples by certified technicians at a mobile unit brought to the company's facility or

at a clinic; delivery of samples to qualified laboratories; delivery to the company of the laboratory report; and communication to the company of the test results. The information provided pertains only to the samples tested and is confidential and cannot be provided to any party other than the company hiring Petitioner or such company's designee.

These services are provided as an alternative to hospital-based drug and alcohol testing services. The services are substantially similar to hospital-based testing except that the collection of samples occurs at the customer's place of business. Samples taken by Petitioner for federally mandated drug tests are analyzed by independent laboratories.

In some cases Petitioner handles all record keeping and management of files to ensure compliance with Federal mandates.

Opinion

Section 1105(c) of the Tax Law imposes tax on the receipts from every sale, except for resale, of certain enumerated services. Services which are not specifically described in the statute are not subject to sales tax.

With respect to issues one through five (whether provided individually or in conjunction with each other) of the Petition:

(1) Petitioner's services provided to its clients consisting of consulting and providing training for establishing an internal drug and alcohol testing program are not specified services subject to tax under Section 1105(c) of the Tax Law and thus are not subject to sales or use tax.

(2) Petitioner's services provided to its clients consisting of writing policies regarding drug and alcohol testing (which we take to entail consulting with the client to identify what policies the client wants and then setting forth those policies in a written document to be furnished to the client) are not specified services subject to tax under Section 1105(c) of the Tax Law and thus are not subject to sales or use tax.

(3) Petitioner's services provided to its clients consisting of the collection of blood or urine samples for drug and alcohol testing from company employees by certified technicians at mobile units or at clinics for testing at independent laboratories are not specified services subject to tax under Section 1105(c) of the Tax Law and thus are not subject to sales or use tax.

(4) Petitioner's services provided to its clients consisting of the delivery of laboratory reports and the communicating of test results, performed by independent laboratories, are not specified services subject to tax under Section 1105(c) of the Tax Law and thus are not subject to sales or use tax. See Scientific Services, Adv Op Comm T&F, August 25, 1997, TSB-A-97(51)S.

TSB-A-97(63)S
Sales Tax

(5) Petitioner's services provided to its clients consisting of recordkeeping and management of information necessary for such clients to complete Federal DOT Audit Reports on Drug and Alcohol testing are not specified services subject to tax under Section 1105(c) of the Tax Law and thus are not subject to sales or use tax.

DATED: September 29, 1997

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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