

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

TSB-A-82(27)S
Sales Tax
August 16, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S820310A

On March 10, 1982 a Petition for Advisory Opinion was received from Otisca Industries, Ltd., P.O. Box 127 Salina Station, 501 Butternut Street, Syracuse, New York 13208.

The issue raised is whether receipts from the purchase of a computer which is employed for both scientific calculations and financial and administrative purposes is subject to the sales taxes imposed under Article 28 of the Tax Law and authorized under Article 29 of the Tax Law.

Petitioner is engaged in research and development and has no business activity in any commercial area. Petitioner hopes to develop certain fossil fuel patents which will become commercial products within the next five years.

During 1979 Petitioner purchased a computer, the size and speed of which were criteria for selection based on anticipated future use in making complex scientific calculations. Less than twenty-five per cent of the capacity of the computer is devoted to financial and administrative needs. However, such usage normally accounts for approximately seventy-five per cent of the actual usage time of the computer. Petitioner states that during certain periods of time the scientific usage of the computer may greatly exceed the financial and administrative use. Petitioner points out, however, that the amount of any such future direct use for research and development cannot be accurately projected.

Petitioner states that it did not pay sales tax on the purchase of the computer because it considered it to be used solely for research and development, or in support of the total research objective of Petitioner's organization.

Section 1105(a) of the Tax Law imposes the State sales tax on receipts from retail sales of tangible personal property. Section 1115(a)(10) of the Tax Law, however, exempts from such tax receipts from the sale of: "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."

The Sales and Use Tax Regulations provide the following definitions, applicable herein: "(1) Direct use in research and development means actual use in the research and development operation. Tangible personal property for direct use would broadly include materials worked on, and machinery,

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equipment and supplies used to perform the actual research and development work. Usage in activities collateral to the actual research and development process is not deemed to be used directly in research and development. (2) Tangible personal property is used predominantly in research and development if over fifty per cent of the time it is used directly in such function. (3) Tangible personal property is exempt only if it meets the tests of direct and predominant use." 20 NYCRR 528.11(c). (emphasis supplied)

Petitioner states that financial and administrative needs will normally account for approximately seventy-five per cent of the actual usage time of the computer, even though during certain periods of time the scientific usage may greatly exceed the other uses. The use of the computer for administrative and financial purposes constitutes an activity which is collateral to Petitioner's research and development activities, and the time thus spent does not constitute time spent directly in research and development. 20 NYCRR 528.11(c). Inasmuch as the use of the computer fails to satisfy the requirements set forth at 20 NYCRR 528.11(c), quoted above, it does not constitute property to which the exemption provision contained in section 1115(a)(10) of the Tax Law is applicable. The foregoing considerations are equally applicable to local sales taxes imposed pursuant to the authority of Article 29 of the Tax Law.

DATED: July 21, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau