

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

TSB-A-96 (79) S
Sales Tax
December 16, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S960509A

On May 9, 1996, a Petition for Advisory Opinion was received from EMCON, 1433 N. Market Blvd., Suite 2, P.O. Box 349014, Sacramento, CA 95834-9014.

The issue raised by Petitioner, EMCON, is whether charges of a professionally licensed engineering company for photocopying and issuance of its final reports are sales of tangible personal property subject to sales tax.

Petitioner makes the following submission of facts.

Petitioner acquired Wehran Engineering Corp. and Subsidiaries (hereinafter "WEC") and merged them into EMCON. Prior to this merger, WEC was an environmental engineering and consulting firm conducting business in nine offices in the northeast and midwest. There were two offices in New York State, one in Middletown and the other in Grand Island. WEC provided a broad range of environmental engineering services to clients representing both private industry and government. The contracts for the engineering services stipulated that the fee WEC was to be paid for its services was based on a schedule (included in the contract) of hourly rates for specified engineering and administrative personnel. In addition, the contracts stipulated that the client would be billed for "reimbursable expenses" including expenses such as subcontractors, travel and subsistence, supplies, telephone, courier service, computer usage, safety equipment, and reproduction or photocopy costs. The rates for these items were also specified in an attached schedule with the photocopy charge fixed at 15 cents per page. There was also a charge of \$1.00 to \$1.50 for a 3-ring binder if required or requested. Generally, the number of copies of a report to be supplied to a client was not specified in the contract but was left to the discretion of the client. Frequently, a project would require the production of a map or plan, charges for which were also separately billed in the reproduction category at rates ranging from \$2.70 to \$3.60 per plan.

At no time did WEC offer reproduction or photocopy services to the general public. The service was only performed in conjunction with and incidental to the rendering of professional engineering services.

Section 1101(b)(3) of the Tax Law defines the term "receipt" as "The amount of the sale price of any property and the charge for any service taxable under this article, . . . without any deduction for expenses . . ." (Emphasis added)

Section 526.5(e) of the Sales and Use Tax Regulations explains the above section of law as follows:

Expenses. All expenses, including telephone and telegraph and other service charges, 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.

Example 1: A photographer contracts with a customer to furnish photographs at \$50 each in addition to expenses. The customer is billed as follows:

Photographs (2)	\$100
Model fees	60
Meals	10
Travel	25
Props (Flowers)	<u>5</u>
Total due	\$200

Receipt subject to tax is \$200

Example 2: An appliance repairman charges \$10 per hour plus expenses when on a service call. The customer is billed as follows:

3 hrs. at \$10	\$30
Travel	15
Parts	20
Meals	<u>5</u>
Total due	\$70

Receipt subject to tax is \$70

Section 1101(b)(4)(i) of the Tax Law defines retail sale as:

A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3), (5), (7) and (8) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax

. . . .

In this case, WEC performed a professional engineering service. As a result of performing these engineering services reports were issued to its clients describing its findings and recommendations. In a number of instances multiple copies of a report were provided to a client. WEC charged the client for these photocopies and other reimbursable expenses in the contract.

It has been the policy of the Department to view professional engineering services as a service not enumerated in Section 1105 of the Tax Law. This policy was established with an Opinion of Counsel, dated April 18, 1966 and published in the New York Tax Bulletin - Book 2, Page 58. In R.H. McDermott Corp., Adv Op Comm T & F, March 2, 1988, TSB-A-88(22)S, and PCA Engineering, Inc., Adv Op Comm T & F, February 15, 1990, TSB-A-90(4)S, it was concluded that the furnishing of technical advice by a licensed professional engineer is not deemed to be the sale of tangible personal property or the sale of an enumerated service even if

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a written report is furnished as an incident to the engineering service being performed. Such a professional service is outside the scope of Section 1105 of the Tax Law. Accordingly, to the extent that the services rendered by WEC were the rendering of technical advice by a licensed professional engineer, the charge for said services, including amounts charged for copies of reports, maps or plans furnished as an incident to these services, is not subject to sales or use tax.

In this case, WEC was providing a service not enumerated in Section 1105 of the Tax Law. The fee schedule for the service was fixed and the copying expenses were set at \$.15 cents per page. The purpose of the report prepared by WEC was to inform the client about the solution to a problem presented to WEC as a professional engineering company. The reports given to the client were the findings of the professional engineering staff, expressed to the client through the use of a report.

The effect of Section 1101(b)(3) of the Tax Law is to treat as a single sale any sale in which any of the components cannot be singly purchased. Thus, even though the components of a particular sale can be separately stated, calculated or estimated, if they cannot be separately purchased, the combination of the items listed must be considered as one. Penfold v. State Tax Commission, 114 AD 2d 696 (1985). Section 526.5(e) of the Sales and Use Tax Regulations provides that expenses incurred by a vendor cannot be deducted from charges to a customer where the charges are for the sale of tangible personal property or a taxable service under Section 1105(c)(1), (2), (3), (5), (7) or (8) of the Tax Law. Accordingly, since WEC was not selling a photocopying service in the normal course of business, but rather was providing an engineering service not enumerated in Section 1105(c) of the Tax Law, charges for photocopying expenses were not subject to sales tax. However, the purchases of the paper, supplies and equipment used by WEC to supply these engineering reports are subject to the sales and compensating use tax.

In the event the photocopies are supplied and billed pursuant to a separate contract or agreement apart from the contract or agreement for the sale of the engineering service, then the charges for such photocopies will be subject to sales and compensating use tax, although the charges for the engineering service will not be subject to said tax.

It must be emphasized that this opinion as it relates to engineering services is limited to the tax status of reports and documents (e.g., evaluations, specifications, tests, plans and analysis) which being based upon the principles of mathematics and the physical sciences, may legally be rendered only by licensed professional engineers. Opinion of Counsel, 1966 NYTB-2, p.58.

DATED: December 16, 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.