

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S990504A

On May 4, 1999, the Department of Taxation and Finance received a Petition for Advisory Opinion from Paris Maintenance Co, Inc., 588 Meacham Avenue, Elmont, New York, 11003.

The issue raised by Petitioner, Paris Maintenance Co., Inc., is whether certain supplies purchased by Petitioner for use in providing building cleaning services are subject to sales and compensating use tax.

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

Petitioner provides building cleaning services to various businesses and building management companies. Petitioner's contracts are "cost plus" labor contracts, meaning that Petitioner bills its customers an hourly rate for labor only and the customers are required to buy their own supplies. These supplies include toilet paper, garbage bags, paper towels, rock salt and cleaning supplies.

Petitioner's customers can purchase their supplies from a third party or buy them from Petitioner, using the substantial discounts Petitioner gives them. The supplies that are ordered through Petitioner are shipped from the supply companies directly to the buildings. Petitioner bills its customers separately for the supplies and charges them sales tax.

**Applicable Law and Regulations**

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

\* \* \*

(3) Receipt. The amount of the sale price of any property and the charge for any service taxable under this article, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts and also including any charges by the vendor to the purchaser for shipping or delivery regardless of whether such charges are separately stated in the written contract, if any, or on the bill rendered to such purchaser. . . .

(4) Retail sale. (i) 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. . . . (Emphasis added)

Section 1105 of the Tax Law provides, in part:

**Imposition of sales tax.** – . . . there is hereby imposed and there shall be paid a tax . . . upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

\* \* \*

(c) The receipts from every sale, except for resale, of the following services:

\* \* \*

(5) Maintaining, servicing or repairing real property, property or land, as such terms are defined in the real property tax law, whether the services are performed in or outside of a building. . . .

Section 1110(a) of the Tax Law provides, in part:

Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state on and after June first, nineteen hundred seventy-one except as otherwise exempted under this article, (A) of any tangible personal property purchased at retail. . . . (Emphasis added)

Section 526.6 of the Sales and Use Tax Regulations provides, in part:

(a) The term *retail sale* or *sale at retail* means the sale of tangible personal property to any person for any purpose, except as specifically excluded.

\* \* \*

(c) *Resale exclusion.* (1) Where a person, in the course of his business operations, purchases tangible personal property or services which he intends to sell, either in the form in which purchased, or as a component part of other property or services, the property or services which he has purchased will be considered as purchased for resale and therefore not subject to tax until he has transferred the property to his customer.

\* \* \*

(6) Tangible personal property purchased for use in performing services which are taxable under sections 1105(c)(1), (2), (3) and (5) of the Tax Law is purchased for resale and not subject to tax at the time of purchase, where the property so sold (i) becomes a physical component part of the property upon which the services are performed, or (ii) is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax.

\* \* \*

*Example 9:* A painter purchases plastic drop cloths and sandpaper and after painting a customer's premises, leaves the used drop cloths and sandpaper at the premises. The drop cloths and sandpaper, even though of limited or no use after the painting, have not been purchased for resale as they are items used by the painter in performing a taxable service. The drop cloths and sandpaper are not actually transferred to the purchaser of the service in conjunction with the performance of the service.

Section 527.7(b) of the Sales and Use Tax Regulations provides, in part:

(b) *Imposition.* (1) The tax is imposed on receipts from every sale of the services of maintaining, servicing or repairing real property, whether inside or outside of a building.

\* \* \*

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(3) When the service of maintaining, servicing or repairing real property is performed in conjunction with the transfer of title to tangible personal property, the price of the tangible personal property is also subject to tax.

### **Opinion**

Petitioner is in the business of providing building cleaning services which are subject to sales tax under Section 1105(c)(5) of the Tax Law as the maintenance and servicing of real property. In accordance with Section 1101(b)(4)(i) of the Tax Law and Section 526.6(c) of the Sales and Use Tax Regulations, tangible personal property purchased for use in performing the services subject to tax under Section 1105(c)(5) of the Tax Law may be purchased for resale, where the property so sold becomes a physical component part of the property upon which the services are performed or where the property is to be actually transferred to the purchaser of the service in conjunction with the performance of the taxable service.

Since Petitioner is selling a service subject to tax under Section 1105(c)(5) of the Tax Law, it may purchase for resale those items which will become a physical component part of the building serviced or will actually be transferred to its customers. However, if such items of tangible personal property are actually consumed by Petitioner in the performance of its cleaning services, they cannot be purchased for resale and are subject to sales and compensating use tax.

In this case, the paper towels used by Petitioner to perform cleaning services, the garbage bags used to collect and remove garbage from customers' premises, the rock salt and the ordinary cleaning agents/supplies do not become physical component parts of Petitioner's customers' property, nor are they actually transferred to Petitioner's customers in conjunction with the performance of Petitioner's cleaning activities (see Jeffrey J. Coren, CPA, Adv Op Comm T&F, June 24, 1999, TSB-A-99(34)S; Ruston Paving Co., Dec State Tax Commn., September 15, 1986, TSB-H-87(222)S). These items are used by Petitioner as part of its service to its customers. Any rock salt or cleaning agents which remain on a customer's property are merely incidental to Petitioner's cleaning service and are of no use to the customer. Accordingly, purchases of such supplies by Petitioner are retail sales pursuant to Section 1101(b)(4)(i) of the Tax Law and are subject to the sales and compensating use tax imposed by Article 28 of the Tax Law.

Sales and compensating use tax is due on purchases of these supplies irrespective of the fact that Petitioner separately bills its customers for the supplies. When Petitioner furnishes both its service and the supplies to its customers, the provision of the supplies is connected to the provision of the service and cannot be considered a separate transaction for sales tax purposes (see Matter of Custom Management Corporation v. Tax Commn., 148 AD2d 919).

With regard to the other items listed in this Petition, Petitioner is not required to pay tax on purchases of property that becomes a physical component of its customers' property or is actually transferred to its customers in the performance of its services. This exemption applies to toilet paper,

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paper towels and hand soap placed in rest rooms and to waxes placed on floors and furniture, and may be claimed by Petitioner issuing a *Resale Certificate* (Form ST-120) to the vendor of the exempt supplies no later than 90 days after the purchase.

DATED: March 29, 2000

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

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