

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-06(28)S
Sales Tax
November 30, 2006

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S060208A

On February 8, 2006, the Department of Taxation and Finance received a Petition for Advisory Opinion from Accurate Disposal, Inc., P. O. Box 6155, Schenectady, New York, 12306-0155.

The issue raised by Petitioner, Accurate Disposal, Inc., is whether sales tax is due on Petitioner's purchases of trash containers used by residential customers or whether such purchases are exempt from tax as purchases for resale.

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

Petitioner is a commercial and residential garbage removal company. Petitioner provides trash containers to many of its commercial and residential customers in conjunction with its trash removal services. Customer invoices show a separate and specified equipment rental charge in addition to a separate and specified trash removal charge. However, customers may or may not use Petitioner's trash removal service in conjunction with Petitioner's containers. The equipment rental charge is unaffected by whether or not the customers also use Petitioner's trash removal service.

The size, type and dollar value of the trash containers provided to customers are based solely on the need and preference of the customer made known by the customer's request.

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:

* * *

(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. . . .

* * *

(5) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume . . . conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor.

Section 1105(a) of the Tax Law provides for the imposition of sales tax upon:

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

Section 526.6(c)(1) of the Sales and Use Tax Regulations provides that:

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.

Opinion

Petitioner is a commercial and residential garbage removal company. Customer invoices show a separate and specified equipment rental charge in addition to a separate and specified trash removal charge. Customers may or may not use Petitioner's trash removal service in conjunction with Petitioner's trash containers. The equipment rental charge is unaffected by whether or not the customers also use Petitioner's trash removal service.

In *Morton L. Coren, P.C.*, Adv Op Comm T&F, June 29, 1990, TSB-A-90(33)S, it was concluded that even though the components of a particular sale could be separately stated, calculated or estimated, if such components could not be separately purchased, the combination of items must be considered as one and, thus, subject to sales tax as a single purchase. See also *Penfold v State Tax Commission*, 114 AD 2d 696 [1985].

In the case of a trash removal service, where property (containers) and service (trash removal) are sold jointly, the transaction is viewed in its entirety. If the purchaser of a trash removal service cannot purchase (or lease) the container separately from the service even though a separate price is shown on the invoice to the purchaser, the sale is one of an integrated trash removal service. In such circumstances, the trash removal company is using the container to

facilitate the removal of trash from its customer's premises. In addition, the customer is using the container to store trash while waiting for the company to remove it. In such case, the vendor of the trash removal service cannot purchase the containers exempt from tax as purchases for resale. An exception to this rule exists, however, where a trash container used by the service provider as part of a trash removal service subject to sales tax under section 1105(c)(5) of the Tax Law is "actually transferred," i.e., permanently transferred, to the purchaser of the service. In such circumstances, the vendor of a trash removal service may purchase the containers exempt from sales tax as a purchase for resale pursuant to section 1101(b)(4)(i)(B) of the Tax Law. See *Waste Management of New York, Inc.*, Dec Tax App Trib, March 21, 1991, DTA No. 805791, aff'd 185 AD2d 479 (3d Dept 1992).

Alternatively a vendor of a trash removal service may purchase containers exempt from sales tax as purchases for *resale as such* pursuant to section 1101(b)(4)(i)(A) of the Tax Law, if it can prove that there was a specified charge to its customers for the rental of the containers, the charge was reasonable, the containers were not used interchangeably for rental and non-rental purposes, and the containers were purchased exclusively for resale (or rental). See *Matter of C.I.D. Refuse Service*, Dec Tax App Trib, August 31, 1995, DTA No. 809934.

Since the containers in this case are not permanently transferred by Petitioner to its customers, Petitioner's purchases of trash containers that are provided to customers in conjunction with Petitioner's trash removal services may only qualify as purchases for resale if Petitioner's rental of containers is separate and distinct from its sales of its trash removal service and the rental charge is reasonable. In order for Petitioner's sale of its trash removal service to be separate and distinct from its rental of containers, there must be two separate transactions between Petitioner and its customers. If such containers are not rented to Petitioner's customers in a separate and distinct transaction from the sale of Petitioner's trash removal service, then Petitioner's purchases of such containers are retail purchases subject to sales tax under section 1105(a) of the Tax Law.

Petitioner has the burden of proof to establish it purchased the containers for resale. See section 1132(c)(1) of the Tax Law; *Matter of C.I.D. Refuse Service, supra*; *Matter of Albany Calcium Light Co. v State Tax Commn.*, 44NY2d 986; *Matter of U-Need-A-Roll Off Corp. v New York State Tax Commn.*, 67 NY2d 690. Petitioner must maintain records for its containers showing that the containers were rented to its customers and not provided as part of an integrated trash removal service. Merely showing a separate price on its invoice for "trash removal" and "container rental" is insufficient to show that it is renting containers as a separate transaction. In addition to separate pricing, Petitioner needs to prove that customers may rent a container without purchasing Petitioner's trash removal service and that customers may purchase the trash removal service without renting a container from Petitioner. See *Morton L. Coren, P.C., supra*; *Penfold v State Tax Commission, supra*. Petitioner also needs to show that the separate price on its invoice for "trash removal" and "container rental" is reasonable (for example, the prices for these items are comparable to their prices when sold separately). If these conditions are met,

TSB-A-06(28)S
Sales Tax
November 30, 2006

then Petitioner is renting containers to its customers separate from the sale of trash removal services and Petitioner's purchases of such containers are nontaxable purchases for resale.

If trash containers are provided to customers who do not purchase Petitioner's trash removal service, there is a specified charge to its customers for the rental of the container and such charge is reasonable, the containers are not used interchangeably for rental and non-rental purposes, and the containers are purchased exclusively for rental purposes, Petitioner may purchase such containers for resale without payment of sales tax. See *Matter of C.I.D. Refuse Service, supra*.

DATED: November 30, 2006

/s/
Jonathan Pessen
Tax Regulation Specialist IV

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