

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-09(35)S
Sales Tax
August 19, 2009

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S081201B

On December 1, 2008, the Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether its purchases of garbage bags and trash can liners are subject to sales tax. Petitioner's purchases of garbage bags and trash can liners are taxable because Petitioner will use and consume the bags in providing a taxable maintenance service.

Facts

Petitioner provides building cleaning services to various airlines and airport terminal management companies in New York. Petitioner's maintenance service includes trash removal.

Petitioner purchases garbage bags and trash can liners in bulk. At a customer's request, Petitioner will furnish the customer with a supply of garbage bags and/or trash can liners. Petitioner will use some of the bags and liners furnished to a customer to provide trash removal services to the customer. Petitioner's customer has the right to use the garbage bags and trash can liners in areas where Petitioner provides no trash removal services.

Petitioner bills its customers separately for labor charges and charges for tangible personal property, but its sales invoice does not list separate charges for each type of tangible personal property. The charge for tangible personal property covers cleaning supplies used by Petitioner, bathroom supplies such as hand soap, paper towels, toilet paper, and urinal screens, and garbage bags and trash can liners. Petitioner's customers have the option of purchasing any of these items of tangible personal property from third parties.

Analysis

Petitioner is in the business of providing building cleaning services that 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, when the property so resold becomes a physical component of the property upon which the services are performed or when 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 items that will become a 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 tax. In this case, the garbage bags and trash can liners used to collect and remove garbage from customers' premises do not become component parts of the customers' property, nor are they actually transferred to Petitioner's customers in conjunction with the performance of Petitioner's cleaning activities (*see Paris Maintenance*, Adv Op Comm T&F, March 29, 2000, TSB-A-00(14)S; *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). Therefore, Petitioner is the retail purchaser of the garbage bags and trash can liners used to collect and remove garbage from customers' premises and owes sales tax on the purchases.

Sales and compensating use tax is due on purchases of garbage bags and trash can liners used to collect and remove garbage from customers' premises, even though Petitioner separately bills its customers for those 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).

The garbage bags and trash can liners furnished to a customer that Petitioner does not use to collect and remove garbage from customers' premises are actually transferred to the customers. Therefore, these garbage bags and trash can liners are purchased for resale and are not subject to sales tax. Petitioner is selling these garbage bags and trash can liners to its customers and must collect sales tax on the receipts for those sales.

All purchases of tangible personal property are presumed subject to sales tax. Tax Law § 1132(c). Petitioner is responsible for identifying the garbage bags and trash can liners that it actually transfers to its customers (i.e., identifying the garbage bags and trash can liners that Petitioner does not use to provide trash removal services). An example of sufficient proof would be an invoice issued to a customer that lists the number of bags and liners sold to the customer separately from the trash removal services. If Petitioner cannot identify the garbage bags and trash can liners that it actually transfers to its customers, sales tax is due on the full amount it paid for the garbage bags and trash can liners (*see Matter of Fannon & Osmond Photography, Inc.*, Tax Appeals Tribunal, July 19, 1990).

DATED: August 19, 2009

/S/

Jonathan Pessen
Director of Advisory Opinions
Office of Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.