

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

TSB-A-15(23)S
Sales Tax
May 26, 2015

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S130917A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] "Petitioner". Petitioner asks whether charges for the service of recovering propane gases that are in old or unusable tanks of its customers and providing the propane back to its customers in bulk are subject to State and local sales and use taxes. We conclude that Petitioner's services are not subject to sales and use taxes.

Facts

Petitioner states that it is in the business of recovering propane that is in old or unusable tanks and giving back the propane to its customers in a usable tank. The propane tanks from which the Petitioner removes the propane range in size from 48 gallon tanks (which is equal to 200 pounds of propane) to 1 million gallon tanks. The propane tanks from which Petitioner removes the propane must be emptied before they can be repaired or refurbished. However, Petitioner notes that there are other means to dispose of the remaining propane in the tanks, including burning off the remaining propane. Petitioner does not engage in the repair or refurbishing of the propane tanks. The service Petitioner provides allows for the propane to be saved in a safe and environmentally friendly manner and allows financial savings to the Petitioner's customers as they retain usable propane that can be used or sold.

Petitioner does not own the tanks and the reclamation of the propane is done at its customer's premises. Petitioner charges one lump sum that includes mobilization (Petitioner's trucks prepping at Petitioner's location and going to the customer's site), evacuation of the old or unusable propane tanks, providing recovered gallons of propane to its customer, and demobilization (breaking down Petitioner's equipment and returning to Petitioner's location).

Analysis

Except for purposes of the tax imposed by Tax Law §§ 1105(b) and 1105-A on sales of gas and gas service (utilities), propane is not otherwise considered to be tangible personal property for the purposes of sales and use taxes, *See* Tax Law § 1101(b)(6). *See* TSB-A-07(25)S. Therefore, the reclamation service provided by Petitioner is not the service of producing, fabricating, or processing of tangible personal property for purposes of the tax imposed by Tax Law § 1105(c)(2). In addition, because the services provided by Petitioner are done primarily to salvage the propane for reuse or resale and not for maintenance or repair of tangible personal property, Petitioner's service is not taxable under Tax Law

§ 1105(c)(3) or (5). Therefore, Petitioner's charges for the services of reclaiming propane for its customers are not subject to sales tax.

DATED: May 26, 2015

/S/

DEBORAH R. LIEBMAN
Deputy 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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.