

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

TSB-A-15(32)S
Sales Tax
July 17, 2015

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S140512A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] “Petitioner”. Petitioner asks whether receipts from the sale of the services of installing, inspecting, maintaining or repairing fire alarm systems, kitchen fire suppression systems, gas station fire suppression systems, fire sprinklers and fire extinguishers are exempt from New York State and local sales and use tax.

We conclude that (a) receipts received from the installation of fire alarm or suppression equipment are subject to sales tax, unless the installation qualifies as a capital improvement; (b) maintenance or repair work carried out to keep equipment in a condition of fitness, efficiency, readiness or safety or restoring it to such a condition is subject to sales tax; and (c) the inspection of such equipment constitutes a repair or maintenance service that is subject to sales tax, unless the inspection is government-mandated for code compliance.

Facts

Petitioner operates a business that provides installation, repair and maintenance of fire alarms and fire suppression equipment to both commercial and residential customers. Petitioner installs fire alarm systems, kitchen fire suppression systems, gas station fire suppression systems, and fire sprinkler systems, and provides portable fire extinguishers (collectively, “fire equipment”). Petitioner also inspects fire equipment. Some inspections are mandated by the New York State Fire Code (“Fire Code”), while other inspections are conducted at the behest of an insurance company or Petitioner’s customer. Additionally, Petitioner conducts maintenance or repair work on fire equipment following an inspection or as a result of damage due to various causes.

Analysis

Tax Law § 1105(c)(3) imposes sales tax on receipts from every sale of the installation of tangible personal property, except for the installation of property that constitutes a capital improvement to real property. *See* Tax Law § 1101(b)(9)(i). A capital improvement is defined as an addition or alteration to real property that: (A) substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; (B) becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and (C) is intended to become a permanent installation. *See* 20 NYCRR § 527.7(a)(3).

If the installation of the fire equipment by Petitioner does not result in a capital improvement, Petitioner must collect sales tax from the customer on the charges for both the equipment and the installation. However, Petitioner may take a credit on its sales tax return for

tax it paid on its purchase of the equipment. If the installation qualifies as a capital improvement, charges to the customer for installation of the equipment will not be subject to sales tax. In those situations, Petitioner will not be required to collect sales tax if it receives a properly completed *Certificate of Capital Improvement* (ST-124) within 90 days of the date the installation is performed. See TSB-A-03(23)S. However, Petitioner must pay tax on the materials that are installed as part of the capital improvement at the time of purchase. See Tax Law § 1101(b)(4). The fact that the installation of the equipment may be required by the Fire Code or other law or regulation does not affect whether the charges for the equipment or its installation are subject to sales tax.

Tax Law § 1105(c)(3) and (5) also impose sales tax on receipts from the services of “maintaining, servicing or repairing” tangible personal property and real property, respectively. See TSB-A-13(39)S. These services include all activities that relate to keeping property in a condition of fitness, efficiency, readiness or safety, or restoring it to such condition. 20 NYCRR §§ 527.5 (a)(3), 527.7(a)(1).

Petitioner states that it conducts maintenance and repair work on fire equipment following an inspection, or when it is damaged by fire or some other cause. The services of maintenance and repair of fire equipment are subject to tax because these services keep the equipment in a condition of fitness, efficiency, readiness or safety. Consequently, Petitioner’s receipts from repair and maintenance services are subject to sales tax, regardless of whether they are required by the Fire Code or other law or regulation.

Petitioner also provides the service of inspecting fire equipment. A diagnostic service that tests the function of a piece of equipment is generally considered a taxable maintenance service, even if no repair is performed. 20 NYCRR § 527.5(a)(3), Example 6. However, inspections that are government-mandated for code compliance are not subject to sales tax. See TSB-A-05(11)S; TSB-A-96(67)S. Petitioner states that some of the inspections it performs on the fire equipment are mandated by the Fire Code. Charges for these inspections would not be subject to sales tax. However, inspections that are not government-mandated, but rather are performed at the request of a customer or third party, are subject to tax under Tax Law § 1105(c).

DATED: July 17, 2015

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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.