TSB-A-16(16)S Sales Tax April 28, 2016

STATE OF NEW YORK COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO S150601A

The Department of Taxation and Finance received a Petition for Advisory Opinion from Petitioner asks whether charges for automobile repairs are subject to New York State and local sales taxes if the repair facility is located out of state, but the repaired automobile is delivered to the customer in New York. Petitioner also asks whether repair equipment is subject to New York State and local sales taxes under two scenarios.

We conclude that charges for maintenance and repairs are taxable in New York if the serviced property is delivered to the customer in New York. Repair equipment is subject to State and local sales tax if it is delivered in New York State.

Facts

Petitioner, which is registered for sales tax purposes in New York, operates an automobile sales showroom in New York City. Petitioner has an auto body shop in New Jersey that handles repairs of its customers' damaged automobiles. No customer ever visits the body shop, and there is no ability for a customer to pick up repaired automobiles at that facility. A customer whose automobile requires auto body repair work must deliver the automobile to the New York City showroom and pick it up at the showroom when the work is completed.

Petitioner purchases certain equipment to repair automobiles (e.g., lifts). Petitioner places all equipment orders from its New York City location. In some instances, the equipment is delivered to Petitioner's New York location and transported by Petitioner in its own trucks to its New Jersey facility for installation. In other instances, the equipment is delivered directly to Petitioner's New Jersey facility.

Analysis

Petitioner's charges for auto body repairs are subject to New York State and local sales tax. Installing, maintaining, servicing or repairing tangible personal property is subject to State and local sales taxes. See Tax Law § 1105(c)(3). Generally, the sales tax is a destination tax: "[t]he point of delivery or point at which possession is transferred by the vendor to the purchaser, or the purchaser's designee, controls both the tax incidence and the tax rate." 20 NYCRR § 525.2(a)(3). Charges for repairs or other taxable services are subject to New York state and local sales taxes if the repaired or serviced property is delivered to the customer in New York. "The rate of the combined State and local sales tax is the rate in effect in the taxing jurisdiction where the property serviced is delivered to the customer (or the customer's designee)." Publication 838, A Guide to Sales Tax for Automobile Dealers.

Because all automobiles on which Petitioner has performed auto body repairs are delivered to its customers at Petitioner's New York City location, those repairs are taxable in New York at the combined State, New York City and MCTD sales tax rates in effect at the location of Petitioner's showroom.

In addition, Petitioner's purchases of equipment for use in repairing automobiles are subject to sales tax if that equipment is delivered in New York. A "sale" occurs when there is a transfer of title or possession, or both, for consideration. *See* Tax Law § 1105(b)(5). Thus, a sale has occurred in New York when Petitioner purchases repair equipment and the equipment is delivered to Petitioner's New York City location. The fact that Petitioner may later move that equipment outside the State does not negate the occurrence of a sale in New York. Equipment delivered directly to Petitioner's New Jersey facility would not be subject to sales tax in New York, even if the order is placed from Petitioner's New York City location. However, any equipment purchased by Petitioner and delivered outside the State that is subsequently brought into New York for use within the state would be subject to State and local use taxes. *See* Tax Law § 1110 (a).

DATED: April 28, 2016

/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.