

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-A-89 (27)S  
Sales Tax  
August 9, 1989

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S890302A

On March 2, 1989 a Petition for Advisory Opinion was received from Di Marco, Abiusi, Pascarella & Firnstein, CPA's, 4 Clinton Square - Suite 104, Syracuse, N.Y. 13202-1074.

The issues raised are: (1) whether amounts paid by a property owner to a management company for employees provided by the management company are considered exempt wages; and (2) whether any part of the service performed by the employees provided by the management company is subject to sales tax.

The petitioner submits the following statement of facts as the basis for the requested Advisory Opinion:

A property owner (PO) engages a management company (MC) to provide various services to the PO. The primary service provided by the MC is that which is payroll related. Specifically, if a PO needs to hire an employee, the PO provides the MC with the job requirements and the MC locates the job applicants via newspaper advertisements or similar methods. Responding job applicants are directed to the PO, which interviews and makes the ultimate decision on whether or not to hire the job applicant. If the job applicant is not hired by the PO, the applicant has no further relationship to the PO or MC.

If the job applicant is hired, the employee reports to and his work schedule is determined by the PO; the PO has full and complete authority over the employee, including the wage rate of the employee. At this point, the MC is involved in that the MC handles all payroll matters related to the PO's employee.

Specifically, the employee submits his time sheet to the PO manager, who reviews it and approves it. The PO draws up a list of the payroll by employee for that time period and submits the payroll sheet to the MC for payment. The MC has no authority to alter the payroll sheet or deny payment to any individual employee. The MC prints the employee payroll checks (the MC's name is on the check, not the PO) and turns the checks over to the PO, who then distributes the checks to the employees. The checks are drawn against the MC's bank account and payment is not contingent upon reimbursement by the PO. Payroll reports (Form 941, W-2, etc.) are filed under the MC's name and employer identification number. The PO reimburses the MC the gross payroll amount plus a fixed mark-up to cover employer taxes and fringe benefits.

Section 1105(c) of the Tax Law imposes a sales tax on a variety of services. Section 1105(c)(5) also excludes from sales tax, "Wages, salaries and other compensation paid by an

employer to an employee for performing as an employee the services described in paragraphs (1) through (5) of this subdivision (c) are not receipts subject to the taxes imposed under such subdivision."

The individuals involved are employees of the management company. Indicia of this include the facts that "... MC prints the payroll checks (the MC's name is on the check, not the PO) ... The checks are drawn against the MC's bank ... payment is not contingent upon reimbursement by the PO ... Payroll reports (Form 941, W-2, etc.) are filed under the MC's name..". The amount paid by the property owner to the management company are not wages paid by an employer to its employees but, the payment for services rendered by one corporation for another corporation. (See 107 Delaware Associates v New York State Tax Commission 64 NY 2d 935.)

Since the employees are employed by the management company, the management fee and any other charges made by the management company are a part of the management company's sale. "The amounts received from the corporate clients under the reimbursed costs, subsidy and management fee arrangements are sales ..." (Stouffer Management Food Services Inc. v James H. Tully, 98 Misc 2d 1128).

Petitioner did not indicate the nature of the services which the property owner obtains from the individuals provided by the management company. If the management company provides an individual who performs an exempt service such as typing or bookkeeping, its management fee as well as its charges for the individual are exempt. However, If the management company provides an individual who performs a taxable service pursuant to Section 1105(c), such as painting, it must collect the sales tax on the entire amount charged including the management fee.

DATED: August 9, 1989

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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