

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

TSB-A-93 (14)S
Sales Tax
February 26, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S921007A

On October 7, 1992, a Petition for Advisory Opinion was received from KPMG Peat Marwick, 345 Park Avenue, New York, New York 10154.

The issue raised by Petitioner, KPMG Peat Marwick, is whether the receipts derived from the temporary engineering design and technical services provided by XYZ Company are exempt from State and local sales and use taxes as services provided by a temporary service contractor.

XYZ Company (hereinafter XYZ) is a provider of temporary engineering design and technical services in the State of New York. XYZ is contacted by customers who request engineering design and technical services. These customers include engineers, technicians, and other types of professionals within various industries.

When contacted, XYZ furnishes the requestor with a list of available XYZ personnel and their relative experience level. From this list, the customer chooses the individual or individuals who they feel meet the job requirements. XYZ's personnel then assist the customers in their design of new products and manufacturing processes in fields such as electronics, aerospace, computer hardware and software, as well as various other types of industries.

Taxability of Services Provided By Temporary Service Contractors, TSB-M-87(13)S, states, in part, that:

Section 1105(c) of the Tax Law imposes a tax on certain services ... When a temporary service contractor provides personnel to perform such taxable services for its client, the fee paid by the client for these services constitutes a receipt subject to tax. Accordingly, the temporary service contractor is required to collect sales tax on the fee charged to the client for such taxable services, regardless of how the charge is arrived at or how much the contractor is required to pay its personnel ...

Example 1. X Corporation wants the names and titles of its executives painted on their office doors. X Corporation requests a commercial painter from Y Corporation, a temporary service contractor. The painter works for three, 8-hour days at X Corporation. Y Corporation bills X Corporation \$360.00 (\$15.00 per hour x 24 hours). Since the service performed by the painter is one of the services enumerated as taxable under the Tax Law, Y Corporation must add a sales tax to the \$360.00 charge.

If the services performed by the temporary service contractor's employee are not subject to tax under Section 1105(c) of the Tax Law, then no tax is to be collected on the charge for these services.

Example 2. Y Corporation, a temporary service contractor, is requested by X Company to furnish X Company with an individual possessing telephone and typing skills to replace X Company's secretary for a four-week period. No tax is required to be collected on the fee Y Corporation charges X Company since the services provided by Y Corporation's employee to X Company are not taxable services under Section 1105(c) of the Tax Law.

Where the taxable service performed by the individual supplied by the temporary service contractor to the client is purchased by the client for resale, or results in a capital improvement to real property, such service is not subject to tax under section 1105(c) of the Tax Law. The temporary service contractor will not be required to collect a sales tax on the fee charged the client if a properly completed exemption certificate is provided by the client within 90 days of the date the services were performed. It should be noted that when services of both a taxable and nontaxable nature are performed, tax is required to be charged on the total amount of the bill unless the charges for taxable and nontaxable services are separately stated.

Example 3. Z company requests XYZ, a temporary service contractor, to furnish a plumber to install a hot water heater in Z Company's office building and to make repairs to the building's plumbing system. The plumber works for an hour on the installation of the hot water heater and spends an additional 2 hours making repairs to the plumbing system. When XYZ bills Z Company, the charge for the installation of the hot water heater (a capital improvement) and the charge for the repairs to the plumbing system (a taxable service) must be separately stated on the bill. In addition, a Certificate of Capital Improvement, Form ST-124, must be received by XYZ from Z Company within 90 days of the date the work was completed. XYZ will then charge sales tax only on the portion of the bill that represents charges for the repair work. If XYZ does not receive a Certificate of Capital Improvement from Z Company within the appropriate time period, and/or does not separately state the charges on the bill, then a sales tax must be charged on the total amount billed to Z Company.

Example 4. X Company contracts with a customer to repaint the customer's office building. XYZ, a temporary service contractor, is requested by X Company to furnish X Company with painters to assist in performance of the contract. Since the services being furnished by XYZ are for resale by X Company, such services are not subject to tax under Section 1105(c) of the Tax Law, provided that a

TSB-A-93 (14)S
Sales Tax
February 26, 1993

timely and properly completed Contractor Exempt Purchase Certificate, Form ST-120.1, is furnished to XYZ by X Company.

The Advisory Opinion function is limited to setting forth the applicability of pertinent statutory and regulatory provisions to a specified set of facts. The information contained in the Petition is not sufficiently detailed for a final classification, for sales tax purposes, of each temporary service provided by XYZ. This determination must necessarily be made by administrative procedure. Northeastern Computer Services, Inc., Adv Op Comm T & F, June 24, 1988, TSB-A-88(33)S.

Accordingly, pursuant to TSB-M-87(13)S, supra, if XYZ provides personnel to perform services enumerated as taxable under Section 1105(c) of the Tax Law, its charge for such service will be subject to sales tax, unless, however, such service has been purchased by its customer for resale, or results in a capital improvement to real property. It should be noted that when services of both a taxable and nontaxable nature are performed, tax is required to be charged on the total amount of the bill unless the charges for taxable and nontaxable services are separately stated.

DATED: February 26, 1993

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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