

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

TSB-A-93 (44)S
Sales Tax
August 13, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S930308A

On March 8, 1993, a Petition for Advisory Opinion was received from Monroe Muffler Brake Inc., P.O. Box 22720, Rochester, New York 14692.

The issue raised by Petitioner, Monroe Muffler Brake Inc., is whether the fees paid by Petitioner to various companies for recycling used tires acquired by Petitioner from its customers are subject to sales tax.

Petitioner is a retailer and installer of repair parts and tires for cars and trucks. When Petitioner sells and installs tires, customers are charged a tire recycling fee of \$1.50 plus applicable New York State sales tax for each used tire retained by Petitioner. Some customers do retain their tires and, as such, are not charged the recycling fee. In some cases, individuals ask Petitioner to recycle their tires even though they did not purchase new tires. It is Petitioner's policy to charge these individuals the same fee to recycle these tires. Petitioner then subcontracts the recycling of the tires to various companies who are paid on the average 75 cents per tire for its removal.

Section 1105(c) of the Tax Law provides, in part, as follows:

Sec. 1105. Imposition of sales tax.--., there is hereby imposed and there shall be paid a tax ... upon:

* * *

(c) The receipts from every sale, except for resale, of the following services:

* * *

(3) Installing tangible personal property, excluding a mobile home, or maintaining, servicing or repairing tangible personal property, including a mobile home, not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith...

* * *

(5) Maintaining, servicing or repairing real property, property or land, as such terms are defined in the real property tax law, whether the services are performed in or outside of a building, as distinguished from adding to or improving such real property, or land, by a capital improvement as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this

chapter, but excluding services rendered by an individual who is not in a regular trade or business offering his services to the public.

Section 527.5 of the Sales and Use Tax Regulations provides, in part, as follows:

§527.5 Installing, repairing, servicing and maintaining tangible personal property

(Tax Law, §1105(c)(3))

(a) Imposition

(1) The tax is imposed on receipts from every sale of the services of installing, maintaining, servicing or repairing tangible personal property, by any means including coin-operated machines, whether or not any tangible personal property is transferred in conjunction with the services.

* * *

(3) Maintaining, servicing and repairing are terms used to cover all activities that relate to keeping tangible personal property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition.

Section 527.7 of the Sales and Use Tax Regulations provides, in part, as follows:

§527.7 Maintaining, servicing or repairing real property

(Additional statutory authority: Tax Law, §1105(c)(5))

(a) Definitions

(1) Maintaining, servicing and repairing are terms which are used to cover all activities that relate to keeping real property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition. Among the services included are services on a building itself such as painting; services to the grounds, such as lawn services, tree removal and spraying; trash and garbage removal and sewerage service and snow removal.

* * *

(b) Imposition

* * *

(2) All services of trash or garbage removal are taxable, whether from inside or outside of a building or vacant land.

Example 3: A carting firm picks up trash and garbage at its customers' premises and dumps the materials at sites away from its customers' premises. Receipts from the sale of this service are taxable. (emphasis added)

In instances where the customers are purchasing and/or having tires installed, the "recycling fee" of \$1.50 per tire charged to customers by Petitioner for retaining their used tires is a charge for servicing tangible personal property. Therefore, such "recycling fee" is subject to State and local sales and use taxes pursuant to Section 1105(c)(3) of the Tax Law and Section 527.5 of the Sales Tax Regulations. In instances where "other individuals" merely drop off tires for recycling and do not purchase and/or have tires installed, such "recycling fee" is not taxable since such transaction is not a service subject to tax under the Tax Law. Since Petitioner does not remove said tires from its customers' or other individuals premises the aforesaid service is not a trash or garbage removal service taxed under Section 1105(c)(5) of the Tax Law.

Pursuant to Section 1105(c)(5) of the Tax Law and Section 527.7 of the Sales and Use Tax Regulations Petitioner, by contracting with various companies to remove the tires from its property, is purchasing a trash or garbage removal service. However this service is not being purchased for resale since Petitioner is not providing a trash or garbage removal service to its customers whereby it maintains or services its customers real property by physically removing such tires from its customers premises. Therefore, the 75 cent per tire fees paid by Petitioner to the various companies to remove the tires from its property are subject to State and local sales and use taxes.

DATED: August 13, 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.