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

TSB-A-93 (4)S Sales Tax January 5, 1993

# STATE OF NEW YORK COMMISSIONER OF TAXATION AND FINANCE

# ADVISORY OPINION

PETITION NO. S920626A

On June 26, 1992 a Petition for Advisory Opinion was received from O'Keefe & Company, 115 Broadway, Hicksville, NY 11801.

The issue raised by Petitioner, O'Keefe & Company, is whether certain transactions involving the providing of copying services, as stated in the various scenarios listed below, are subject to New York State and Local Sales Tax.

# Scenario 1

Company (A), hereinafter referred to as (A), provides services to Company (B), hereinafter referred to as (B), as follows~

To relieve (B) of the costs associated with running (B)'s copy machines, (A) will provide personnel, paper, toner, and other supplies for (B)'s copiers and will charge (B) 10 cents for each copy made on the machine.(A) bills sales tax to (B) as follows:

Total copies X 10 cents X applicable sales tax rate

Does (A) have to pay sales tax on purchases of paper, toner and other supplies since (A) is collecting sales tax on the total charges to (B)?

#### Answer 1

Section 1101(b)(3) of the Tax Law defines receipt as "[t]he amount of the sale price of any property and the charge for any service taxable under this article ..."

Section 1105(a) of the Tax Law imposes tax on "[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

In Scenario 1, (A) is considered to be selling tangible personal property in the form of the copies to (B). (A) bills (B) for each copy provided. (A)'s total charges to (B) are subject to the tax imposed under Section 1105(a) of the Tax Law. (A) should not pay any sales tax on (A)'s purchases of toner and paper since (A) is considered to be reselling the toner and paper to (B). When making the purchases of paper and toner (A) should furnish the supplier with a properly completed form ST-120 Resale Certificate. (A)'s purchases of supplies will not be subject to sales tax if the supplies are actually transferred to (B) as such or as part of tangible personal property. However, if (A) consumes the supplies without any detectable portion of them being transferred to (B), (A)'s purchases of the supplies will be subject to the applicable sales or use tax.

## Scenario 2

In addition to the services enumerated in Scenario 1, (A) will also take on the responsibility of repairing and maintaining the copy machines but will now charge (B) a total of 15 cents for each copy. (A) has a service contract with a third party with a fixed monthly fee plus a per copy charge. The third party will do the repair and maintenance work as necessary.

Does (A) have to pay sales tax on the charges for the repairs/maintenance done by and paid to the third party since CA) has incorporated the estimated cost of the repairs/maintenance that will be needed into the per copy charge that (A) bills CB) and (A) will also bill CB) for sales tax on the total. An example of a bill that CA) presents to CB) is as follows:

	If (A) handles repairs and maintenance	If (A) does not handle repairs and maintenance
	1,000 copies	1,000 copies
	X .15 cents	X .10 cents
	\$ 150.00	\$ 100.00
Sales tax @ 7%	<u>10.50</u>	<u>7.00</u>
	<u>\$ 160.50</u>	<u>\$ 107.00</u>

#### Answer 2

Section 1105(c)(3) of the Tax Law imposes tax upon the receipts from every sale, except for resale, of the service of "[i]nstalling tangible personal property ... or maintaining, servicing or repairing tangible personal property ...".

Although A) will charge (B) an additional amount per copy due to being responsible for repairing and maintaining (B)'s copy machines and will collect the applicable sales tax due on the additional charges, (A) will not be considered to be reselling the repair and maintenance service performed for (A) by the third party unless the agreement between (A) and (B) and/or the invoice CA) gives to CB) specifically indicate Cs) that (A) is charging CB) a specific amount per copy and that CA) will charge CB) an additional amount per copy for repairs and maintenance. If the agreement and/or invoice indicates that a separate charge is being made for repairs and maintenance CA) should not pay sales tax on the charges billed to (A) by the third party. When making purchases of repair and maintenance services from the third party (A) should furnish the third party with a properly completed form ST-120, Resale Certificate for purposes of substantiating that the transaction was not subject to sales tax.

# Scenario 3

(A) provides the same services to (B) as noted in Scenario 1. Additionally (A) agrees to pay the lease payments that (B) has to make on the copy machine that (B) owns in exchange for a higher per copy charge. If (B) cancels the copy contract, (A) will stop making the lease payments for (B). A sample bill is as follows:

	If (A) makes lease  Payments for (B)	If (A) does not make lease payments for (B)
Sales Tax @ 7%	1,000 copies <u>X .20</u> cents  \$ 200.00 <u>14.00</u>	1,000 copies <u>X .10</u> cents  \$ 100.00 <u>7.00</u>
	<u>\$ 214.00</u>	<u>\$ 107.00</u>

Does (A) have to pay sales tax on the payments it makes to the leasing company?

## Answer 3

Section 1101(a)(4) of the Tax Law defines retail sale as "[a] sale of tangible personal property to any person for any purpose, other than (A) for resale as such ... ".

Section 1101(b)(5) defines sale, selling or purchase as "[a]ny transfer of title or possession or both .... lease or license to use or consume ... for a consideration or any agreement therefor."

Section 1115(a)(12) of the Tax Law provides an exemption from tax on receipts from retail sales of "[m]achinery or equipment for use or consumption directly and predominantly in the production of tangible personal property ... for sale by manufacturing, processing .... "

Because (B) is the lessee of the copier and as (B) is not using the copier to produce copies for sale, (B)'s lease payments to the lessor were subject to State and local sales tax. The fact that (A) has agreed to make the lease payments on (B)'s behalf, does not change the tax status of the lease payments. As (A) has not been assigned the lease by (B), (B) continues to be the lessee of the copier. (A)'s payments to the lessor will be subject to State and local sales tax. When (A) bills (B) for (A)'s services, which are billed in the form of a per copy charge, the receipts, regardless of the amount, will also be subject to State and local tax.

However, it is noted that if (B) assigns the lease to (A), (A) will become the lessee and (A)'s payments to the lessor would qualify for the exemption provided under Section 1115(a)(12) of the Tax Law as (A) would be using the machine to produce tangible personal property, in the form of the copies, for sale to (B). In this instance (A) would be required to give the lessor a properly completed form ST-121, Exempt Use Certificate in order for the lessor to substantiate that the transaction was not subject to State or local tax.

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# Scenario 4

Scenario 4 is the same as scenario 3 with the exception that (B) does not own its own copy machine. (A) leases the machine from a leasing company and charges (B) by increasing (B)'s per copy charge.

Does (A) have to pay sales tax to the leasing company since it is charging (B) sales tax on the lease by a higher per copy charge?

#### Answer 4

Section 1101 (a)(4) of the Tax Law defines a retail sale as "[a] sale of tangible personal property to any person for any purpose other than (A) for resale as such .... "

Section 1101(b)(5) defines sale, selling or purchase as "[a]ny transfer of title or possession or both .... lease or license to use or consume ... for a consideration or any agreement therefor."

Section 1115(a)(12) of the Tax Law provides an exemption from tax for receipts from retail sales of "[m]achinery or equipment for use or consumption directly and predominantly in the production of tangible personal property ... for sale by manufacturing, processing ..."

Since (A) is using the leased copy machine to produce copies which (A) sells to (B), the copy machine is considered to be used to produce tangible personal property for sale by manufacturing or processing and (A)'s lease payments to the third party lessor qualify for the exemption provided under Section 1115(a)(12) of the Tax Law. (A) should give the leasing company a properly completed form ST-121, Exempt Use Certificate for the purpose of substantiating that the lease transaction is not subject to sales tax.

DATED: January 5, 1993

/s/
PAUL B. COBURN
Deputy Director
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NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.