

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

TSB-A-95 (38)S  
Sales Tax  
October 10, 1995

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S950502A

On May 2, 1995, a Petition For Advisory Opinion was received from Pasquale & Bowers, 90 Presidential Plaza - Suite 210, Syracuse, New York 13202.

The issue raised by Petitioner, Pasquale & Bowers, is whether the service of trash and garbage removal purchased from a subcontractor by the prime contractor and then resold to a tax exempt organization described in Section 1116(a)(2) of the Tax Law is subject to sales tax.

The Petitioner submitted the following facts:

The customer is a tax-exempt organization exempt from sales tax pursuant to section 1116(a)(2) of the Tax Law.

The project being performed by the prime contractor does not qualify as a capital improvement.

The service being performed by the subcontractor is the removal of waste material consisting of trash and garbage.

The cost of the service being billed to the prime contractor by the subcontractor is re-billed to the tax-exempt organization.

Section 1116(a) of the Tax Law provides in part that:

(a) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

\* \* \*

(2) The United States of America, and any of its agencies and instrumentalities, insofar as it is immune from taxation where it is the purchaser, user or consumer, or where it sells services or property of a kind not ordinarily sold by private persons;

Section 541.7 of the Sales and Use Tax Regulations provides in part as follows:

**Trash and debris removal.** (a) Receipts from the service of trash or debris removal resulting from maintaining, servicing, or repairing real property, property or land (as distinguished from the receipts from the service of removal of debris resulting from

the adding to, demolishing or improving such real property, property or land by a capital improvement) are subject to sales tax on the total amount charged.

*Example 3:* A contractor in the performance of a repair job for a customer, hires a subcontractor to remove the debris accumulated as a result of the repair job. The subcontractor's charge to the contractor for the debris removal is subject to tax. The contractor's total charge to the customer for the repair job is subject to tax.

Section 541.7 of the Sales and Use Tax Regulations specifically subjects the purchase of a trash removal service to sales tax when such service is purchased by a contractor who is performing a repair service. Therefore the prime contractor under the facts presented is required to pay sales tax on the subcontractor's charges for removal of the waste material. The contractor's subsequent charges to an organization described in Section 1116(a)(2) of the Tax Law are not subject to sales tax.

DATED: October 10, 1995

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

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