

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

TSB-A-97(32)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S970303B

On March 3, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from Paper Fibres Corporation, 280 Madison Avenue, New York, NY 10016.

The issue raised by Petitioner, Paper Fibres Corporation, is whether Petitioner may purchase the trash removal service provided by Browning Ferris Industries (hereinafter "B.F.I."), whereby B.F.I. collects waste from Petitioner's transfer station for shipment to a landfill in Pennsylvania, exempt from sales tax because the service is purchased for resale.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner operates a trash removal service whereby it collects trash from various customers and brings it to its transfer station in New York State. Petitioner brings an average of 1,250 tons of waste per month to the transfer station. Petitioner collects sales tax from its customers on the charges for this service.

B.F.I. also operates a trash removal service whereby it collects trash from its own customers and brings it to the transfer station owned and operated by Petitioner. B.F.I. brings an average of 700 tons of waste per month to the transfer station. B.F.I. collects sales tax from its customers on the charge for this service. Petitioner bills B.F.I. for the use of its transfer station, but does not collect sales tax on such fees.

Once at the transfer station, Petitioner consolidates the small loads of trash. There is no material change made to the waste. The transfer station is only a consolidation point where the waste is transloaded from one truck to another. B.F.I. ships all the waste in its trucks from the transfer station to a landfill in Pennsylvania. B.F.I. collects sales tax from Petitioner on the charges for this service.

Applicable Law and Regulations

Section 1105(c)(5) of the Tax Law imposes tax upon receipts from every sale, except for resale, of:

(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. . .

Section 527.7(a) of the Sales and Use Tax Regulations provides, in part:

(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. (emphasis added)

Section 526.6(c)(1) of the Sales and Use Tax Regulations provides:

Where a person, in the course of business operations, purchases tangible personal property or services which he intends to sell, either in the form in which purchased, or as a component part of other property or services, the property or services which he has purchased will be considered as purchased for resale and therefore not subject to tax until he has transferred the property to his customer.

Opinion

In this case, Petitioner collects trash from various customers and brings it to its transfer station. B.F.I. collects trash from its own customers and brings it to the transfer station owned and operated by Petitioner. Petitioner charges B.F.I. for bringing the trash to its transfer station. Once at the transfer station, Petitioner consolidates the small loads of trash. There is no material change made to the waste. B.F.I. has contracted with Petitioner to collect all the waste consolidated at the transfer station and transport such waste in its trucks to a landfill in Pennsylvania.

Pursuant to Section 1105(c)(5) of the Tax Law and Section 527.7 of the Sales and Use Tax Regulations, the service provided by Petitioner and B.F.I. to their customers constitutes a taxable trash and garbage removal service in that they are both maintaining and servicing the real property of their customers. In addition, B.F.I. by contracting with Petitioner to remove waste from Petitioner's transfer station, including waste brought to the transfer station by B.F.I., is providing a separate taxable trash and garbage removal service since B.F.I. is maintaining and servicing the real property of Petitioner. The trash removal service provided by B.F.I. to Petitioner is not part of the integrated trash removal service provided by Petitioner to its customers. In removing waste as described above, Petitioner and B.F.I. are each maintaining and servicing separate and distinct real property. Therefore, the service provided by B.F.I. to Petitioner is not purchased for resale, but rather is an expense incurred by Petitioner in providing trash removal service to its customers.

DATED: May 28, 1997

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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