

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

TSB-A-97(85)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S970926B

On September 26, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from Refuse & Environmental Systems, Inc., 830 Silver Street, Agawam, Massachusetts 01001. Petitioner, Refuse & Environmental Systems, Inc., provided additional information pertaining to the Petition on October 20, 1997.

The issue raised by Petitioner is whether New York State sales tax should be imposed on the receipts from the sale of its waste management services.

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

Petitioner provides management consulting services to commercial and industrial generators of solid waste and recyclable materials ("waste"). Petitioner advises its customers as to the proper, most efficient, economical and ecologically appropriate means of managing their waste, consistent with state and local regulations.

Typically, Petitioner's customers are chain stores, such as department stores, supermarkets and restaurants. Petitioner services multiple locations for its customers, which can be in one state, in a multi-state district or nationwide. Petitioner acts as the representative of its customers in their relationships with the waste haulers who actually pick up and dispose of the waste.

The services that Petitioner typically provides to its customers include some or all of the following activities.

Petitioner conducts an audit of the customer's generation of waste. Based on this audit, Petitioner designs (if necessary) a waste management program that is consistent with the specific needs of the customer. This may include pick up schedules, recycling programs, baling and cardboard back-haul programs.

Petitioner develops and prepares bid specifications for the bidding process to meet the customer's waste hauling needs and invites haulers to bid on such work.

On an ongoing basis, Petitioner monitors the waste stream of the customer. When appropriate and necessary, Petitioner requests the pick up of the customer's waste by the independent waste haulers.

Petitioner audits the customer's invoices that are submitted by the independent waste haulers and other service providers, such as end disposal facilities. Petitioner, where necessary, requests credits and other adjustments to the customer's accounts. The waste haulers include in their invoices all applicable taxes for the services they render, including but not limited to, landfill taxes and sales taxes on the collection and disposal of waste.

Petitioner forwards the invoices to the customer. Petitioner receives the funds from the customer in trust and, in turn, pays the haulers and other service providers on behalf of its customer. Petitioner receives one check from the customer. The check is for an amount that covers all of the customer's locations (both within and outside of New York) and all of the services provided at each location. The check also includes Petitioner's management fee and the sales tax paid by the customer on its purchases.

In addition to the foregoing, as part of its services, Petitioner provides the customer with customized, written reports on its waste disposal activities, including compliance reports for state and federal regulatory agencies. These reports detail the expenses that the customer incurred in the disposal of waste. The reports are tailored to include information for each location of the customer that is serviced by Petitioner. The information is comprised, not only of the disposal cost per location, but also of information relative to the equipment used (e.g., dumpster size) and frequency of pick ups at the particular location. In this regard, the information is based not only on the customer's actual waste experience for each of its locations, but upon specific proprietary formulas developed by Petitioner. These formulas are based on historical data provided by the customer and relate to the size and type of equipment in use, as well as frequency of pick up. No information in the reports is derived from a common database.

The reports are used by the customer for a variety of purposes, including, but not limited to, making comparisons of costs overall, extrapolating sales volume, overall health and management of the business, business trends within various time frames, verification of waste disposal expenses and the preparation of future waste disposal budgets. The reports are deemed proprietary by the customer and cannot be distributed, sold or otherwise provided to other parties. In fact, the information contained in the reports is considered confidential to both the customer and Petitioner. In this regard, the contract between Petitioner and its customer specifically refers to these reports and designates them as confidential and proprietary information. Each report addresses only the specific activities of the specific customer. No comparisons are made with other customers and there are no references to any industry standards.

Petitioner does not engage in any waste collection, disposal, treatment, handling, storage or transportation services whatsoever. Likewise, Petitioner does not own, lease or otherwise operate a waste hauling company, landfill or other type of disposal or treatment facility. Petitioner does not own or lease any waste disposal equipment, such as containers, balers and the like.

All hauling for Petitioner's customers is arranged with independent haulers by competitive bid. The contractual relationships are directly between the customers and the haulers. Petitioner acts solely as the agent for the customers in these activities. Petitioner does not impose any type of surcharge or other fee on services provided to its customers by the haulers or by the disposal facilities. The fees charged by Petitioner are not in any way based upon, or related to, the pick up or disposal fees.

Opinion

Receipts from the sale of Petitioner's waste management services are not subject to New York State and local sales taxes. Section 1105(c) of the Tax Law imposes sales tax on receipts from the sales, other than sales for resale, of certain enumerated services. Management consultant services of the nature performed by Petitioner and described in this Opinion, including the incidental furnishing of the confidential and proprietary customized reports, are not included among the services taxable under Section 1105(c).

DATED: December 29, 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.