

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

TSB-A-98(58)S
Sales Tax
August 6, 1998

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S980409B

On April 9, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Robert D. Plattner, Esq., 75 State Street, P.O. Box 459, Albany, New York, 12201-0459.

The issue raised by Petitioner, Robert D. Plattner, Esq., is whether the entire charge by a landlord to submetered tenants for electric service is subject to sales tax when the transportation of the electricity and the electricity itself are purchased by the landlord from separate vendors and charges for these services are separately stated on the landlord's bills to its tenants.

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

Landlord currently purchases electricity and transportation of this electricity from Utility and subsequently resells the electricity to its submetered tenants, imposing a surcharge of X% of the amount paid by the landlord to the Utility. Landlord provides Utility with a resale certificate and pays no tax to the Utility. Landlord collects sales tax from its tenants on its total charge to tenants for electricity and electric service, including the surcharge.

Landlord is contemplating purchasing its electricity from Company A rather than the Utility. Landlord would purchase electricity from Company A and arrange for and purchase transportation of such electricity from the Utility. Landlord would either impose a single charge on its tenants for electricity, transportation of such electricity and the surcharge, or separately state the individual charges.

Applicable Law and Regulations

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c), and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(3) Receipt. The amount of the sale price of any property and the charge for any service taxable under this article, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts and also including any charges by the vendor to the purchaser for shipping or delivery regardless of whether such charges are separately stated in the written contract, if any, or on the bill rendered to such purchaser and regardless of whether such shipping or delivery is

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provided by such vendor or a third party, but excluding any credit for tangible personal property accepted in part payment and intended for resale.

Section 1105(b) of the Tax Law imposes tax on the following:

The receipts from every sale, other than sales for resale, of gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature, and from every sale other than sales for resale, of telephony and telegraphy and telephone and telegraph service of whatever nature except interstate and international telephony and telegraphy and telephone and telegraph service.

Opinion

Landlord is currently purchasing electric service from the Utility and reselling it to its tenants, with a surcharge. Landlord is contemplating purchasing the electricity from another vendor, Company A, and contracting with the Utility for the purchase of the transportation service. Petitioner inquires whether Landlord, under this new purchasing arrangement, would be required to collect tax from its tenants on the total charge for electric service, or whether the portion of Landlord's charge to its tenants attributable to transportation of the electricity is not subject to tax.

In this instance, Landlord's tenants are purchasing the electric service from Landlord. The tenants are not contracting directly with the Utility for transportation or directly with Company A for electricity. Landlord is purchasing both the transportation and the electricity and reselling them together to its tenants as electric service. Therefore, Landlord's tenants are not purchasing a nontaxable transportation service from Landlord but are purchasing an electric service. Section 1105(b) of the Tax Law imposes sales tax on every sale, other than resale, of electricity and electric service of whatever nature. Taxable receipts include any charges by the vendor for shipping or delivery, regardless of whether these charges are separately stated. See Section 1101(b)(3) of the Tax Law. Accordingly, all charges made by Landlord for electricity, transportation of electricity and surcharges are subject to sales tax, whether separately stated or not. Since Landlord is making purchases of the electricity for resale, Landlord may continue to purchase the electricity exempt from sales tax with a properly completed resale certificate. Landlord's purchase of transportation service from the Utility would not be subject to sales tax.

/s/

DATED: August 6, 1998

John W. Bartlett
Deputy Director
Technical Services Bureau

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