

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

TSB-A-98(62)S
Sales Tax
September 9, 1998

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S980122A

On January 22, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Price Waterhouse LLP, 400 South Hope Street, Los Angeles, California, 90071-2889. Petitioner, Price Waterhouse LLP, submitted additional information relating to the Petition on February 13, 1998.

The issues raised by Petitioner, Price Waterhouse LLP, are the following:

1. Whether fees paid to Petitioner's client for the use of security alarm systems and monitoring services are subject to sales or compensating use tax.
2. Whether purchases of security alarm equipment by Petitioner's client for use in providing protective services are exempt from sales tax as purchases for resale.
3. Whether fees charged by Petitioner's client for maintenance and repair of security alarm systems are subject to sales tax.
4. Whether receipts from the sales of optional security alarm equipment are subject to sales tax.
5. Whether fees charged by Petitioner's client for installation, maintenance and repair of optional security alarm equipment are subject to sales tax.
6. Whether fees charged by Petitioner's client for patrol car services are subject to sales tax.

Petitioner submitted the following facts as the basis for this advisory opinion.

Petitioner's client, Company B, is headquartered outside New York State with offices in several states. Company B recently began providing security alarm systems and monitoring services to residential customers located in New York. The security alarm systems generally consist of a standard package or standard wireless package, both of which remain the property of Company B. The standard package includes a steel cabinet, electronic boards, an electronic telephone dialer, an optional wireless receiver, an optional phone access board, backup battery, transformer, siren, keypad, telephone jack, door and window contacts, and motion sensors. The standard wireless package also includes a receiver board and a key chain remote control. In addition to the above, optional alarm equipment is available for sale including heat detectors, smoke detectors, panic buttons, additional door or window sensors, motion sensors and remote controls.

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Monitoring services are provided from a communications center located in the state where Company B is headquartered. When a protected premises goes into a state of alarm, the system dials the communications center and transmits a digital message to the communications center. The operator in the communications center processes the message and takes appropriate action to resolve the situation. Additionally, patrol car services consisting of a Company B employee periodically patrolling the protected premises may be made available sometime in the future.

Company B provides residential customers with a security alarm system and monitoring service for a stated fee. The standard system package is provided for a specified period of time in accordance with the terms of a service contract. Under the terms of the service contract, title to the security system remains with Company B. The time period of the service contract is anticipated to be 24 months and the customer will have the option of renewing indefinitely. Customers only obtain the right to use the system for the period during which the monitoring services are being provided.

Service contract customers are responsible for remitting a lump sum payment on a monthly, quarterly, semi-annual or annual basis for their use of the system and the monitoring service. Fees for optional alarm equipment will be charged in a lump sum for product, materials and labor. Title to the additional security alarm equipment will pass to the customer. Charges for patrol car services will be separately stated.

Company B purchases the security alarm systems in component form. Company B estimates the material cost of the standard alarm package to be less than 10% of the total service contract fee. None of the equipment is permanently affixed or becomes part of the real property. Upon termination of the lease, all equipment is removed except for communications cables which are left in the ceilings or walls.

Company B employees assemble and install the equipment and perform service and training at the customer's residence.

Applicable Law and Regulations

Section 1101(b)(4) of the Tax Law provides, in part:

Retail sale. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3), (5), (7) and (8) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax.

Section 1101 (b)(5) of the Tax Law provides, in part:

Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume (including, with respect to computer software, merely the right to reproduce), conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor.

Section 1105(a) of the Tax Law imposes sales tax on the receipts of every retail sale of tangible personal property, except as otherwise provided.

Section 1105(c) of the Tax Law imposes a sales tax on the following:

The receipts from every sale, except for resale, of the following services:

* * *

(3) Installing tangible personal property, excluding a mobile home, or maintaining, servicing or repairing tangible personal property, including a mobile home, not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith...

* * *

(8) Protective and detective services, including, but not limited to, all services provided by or through alarm or protective systems of every nature, including, but not limited to, protection against burglary, theft, fire, water damage or any malfunction of industrial processes or any other malfunction or damage to property or injury to persons, detective agencies, armored car services and guard, patrol and watchman services of every nature other than the performance of such services by a port watchman licensed by the waterfront commission of New York harbor, whether or not tangible personal property is transferred in conjunction therewith.

Section 1118 of the Tax Law provides, in part:

The following uses of property shall not be subject to the compensating use tax imposed under this article:

* * *

(7)(a) In respect to the use of property or services to the extent that a retail sales or use tax was legally due and paid thereon, without any right to a refund or credit thereof, to any other state or jurisdiction within any other state but only when it is shown that such other state or jurisdiction allows a corresponding

exemption with respect to the sale or use of tangible personal property or services upon which such a sales tax or compensating use tax was paid to this state. To the extent that the tax imposed by this article is at a higher rate than the rate of tax in the first taxing jurisdiction, this exemption shall be inapplicable and the tax imposed by section eleven hundred ten of this chapter shall apply to the extent of the difference in such rates, except as provided in paragraph (b) of this subdivision.

(b) To the extent that the compensating use tax imposed by this article and a compensating use tax imposed pursuant to article twenty-nine are at a higher aggregate rate than the rate of tax imposed in the first taxing jurisdiction, the exemption provided in paragraph (a) of this subdivision shall be inapplicable and the taxes imposed by this article and pursuant to article twenty-nine shall apply to the extent of the difference between such aggregate rate and the rate paid in the first taxing jurisdiction. In such event, the amount payable shall be allocated between the tax imposed by this article and the tax imposed pursuant to article twenty-nine in proportion to the respective rates of such taxes.

Section 526.6(c)(6) of the Sales and Use Tax Regulations provides:

Tangible personal property purchased for use in performing services which are taxable under section 1105(c)(1),(2),(3),(5),(7) and (8) of the Tax Law is purchased for resale and not subject to tax at the time of purchase, where the property so sold (i) becomes a physical component part of the property upon which the services are performed, or (ii) is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax.

* * *

Example 9: A painter purchases plastic drop cloths and sandpaper and after painting a customer's premises, leaves the used drop cloths and sandpaper at the premises. The drop cloths and sandpaper, even though limited or no use after the painting, have not been purchased for resale as they are items used by the painter in performance of a taxable service. The drop cloths and sandpaper are not actually transferred to the purchaser of the service in conjunction with the performance of the service.

Opinion

Issue 1

Payments received by Company B for use of the security systems and monitoring services are taxable receipts from protective and detective services. Under Section 1105(c)(8) of the Tax Law, all services provided by or through alarm or protective systems of every nature are taxable protective and detective

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services. Since these payments are receipts from services provided through an alarm system, they are subject to sales tax.

Issue 2

Company B is providing taxable protective and detective services as described in Section 1105(c)(8) of the Tax Law. To provide this service, Company B installs security alarm and monitoring systems which link its customers to its communications center outside New York. Under Section 1101(b)(4)(i)(B) of the Tax Law and Section 526.6(c)(6) of the Sales and Use Tax Regulations, purchases of tangible personal property for use in performing services which are subject to sales tax may be excluded from sales tax as sales for resale under certain conditions. To qualify for this resale exclusion, tangible personal property must become a component part of the property upon which the services are performed, or tangible personal property must be later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax. The security alarm equipment purchased by Company B for use in performing its protective services remains the property of Company B, does not become part of the real property being protected, and is removed at the end of the contract period. Therefore, this equipment does not become a component part of the property upon which the services are being performed and is not actually transferred to the purchaser of the services. Accordingly, purchases of security alarm equipment by Company B for use in providing its detective and protective services do not qualify as purchases for resale as described in Section 1101(b)(4) of the Tax Law and Section 526.6(c)(6) of the Sales and Use Tax Regulations and are subject to sales or compensating use tax when purchased by Company B. (See Matter of U-Need-A-Roll Off Corp. v. State Tax Commission, 67 NY2d 690)

If such equipment is purchased outside New York for use within New York, use tax is due on the purchase price of the equipment under Section 1110 of the Tax Law.

If such equipment is purchased outside New York for use within New York and sales tax is paid to another jurisdiction, a credit shall be allowed to the extent of the tax paid if the other taxing jurisdiction does not allow a credit or refund of the sales tax paid, and if the other taxing jurisdiction allows a corresponding credit for sales taxes paid to New York. If the rate of tax imposed by New York is higher than that of the jurisdiction in which the sales tax was paid, use tax is due to the extent of the difference in the two rates. (See Section 1118(7) of the Tax Law)

Company B's purchases of optional security alarm equipment which is later sold to its customers constitute purchases of tangible personal property for resale. Company B would not be required to pay sales tax on these purchases, but would collect sales tax upon sale of these items to its customers. For purchases occurring in New York State, Company B must furnish the seller of such equipment with a properly completed resale certificate (Form ST-120) within 90 days of the date of sale to avail itself of such exclusion from tax.

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Issue 3

Fees charged by Company B for maintenance and repair of the security alarm systems are subject to sales tax. Under Section 1105(c)(3) of the Tax Law, sales tax is imposed on the services of maintaining, servicing or repairing tangible personal property.

Issue 4

Sales of optional security equipment, including heat detectors, smoke detectors, panic buttons, and remote controls, made by Company B to its customers in New York for use in New York constitute retail sales of tangible personal property subject to sales tax under Section 1105(a) of the Tax Law. Purchases of this optional equipment by Company B would constitute purchases for resale and would not be subject to tax, as noted in Issue 2 above.

Issue 5

Fees charged by Company B for installation, maintenance and repair of the optional security alarm equipment are subject to sales tax under Section 1105(c)(3) of the Tax Law.

Issue 6

Fees charged by Company B for patrol car services are subject to sales tax. Under Section 1105(c)(8) of the Tax Law, protective and detective services including guard, patrol and watchman services of every nature except for the performance of such services by a port watchman licensed by the waterfront commission of New York harbor are subject to sales tax.

DATED: September 9, 1998

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

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