

**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-A-98(65)S  
Sales Tax  
September 9, 1998

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO S980323B

On March 23, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from A-Tech Moisture Survey Corp, 61 Courtly Circle, Rochester, New York 14615. Petitioner provided additional information pertaining to the Petition on April 14, 1998.

The issue raised by Petitioner, A-Tech Moisture Survey Corp. is whether the roof inspection services performed by Petitioner are subject to sales tax.

Petitioner submits the following facts as a basis for this advisory opinion.

Petitioner is a national franchised business that was formed in 1975, in Appleton, Wisconsin. In order to perform its inspections Petitioner creates a grid pattern across the field of the roof to assist in systematic readings. This involves stretching a marked rope and painting colored dots at intervals of five feet. Readings are recorded on a cross-section drawing of the roof configuration. Other data is obtained from visual inspection and from additional readings, using an electrical probe instrument, which are taken at several locations. Based on previous soak test data, information is statistically analyzed to develop contours of differing moisture content in four different areas on the roof. This information becomes the basis of recommendations to the building owner with respect to decisions to arrange for roof repairs and/or replacement. These services are not performed by licensed engineers. The services provided allow the building owner to plan work, with great time savings and reduction of unnecessary work related activities.

Applicable Law and Regulations

Section 1105 of the Tax Law provides, in part:

Imposition of sales tax.--On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent upon:

\* \* \*

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

\* \* \*

(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, as

distinguished from adding to or improving such real property, property or land, by a capital improvement as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter, but excluding services rendered by an individual who is not in a regular trade or business offering his services to the public.

Section 527.5 of the Sales and Use Tax Regulations provides, in part, as follows:

Installing, repairing, servicing and maintaining tangible personal property.

(a) Imposition.

\* \* \*

(3) Maintaining, servicing and repairing are terms used to cover all activities that relate to keeping tangible personal property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition.

\* \* \*

Example 6: A company operates a diagnostic service in which it tests an appliance for a set fee, but does not repair the appliance. The charge for the diagnostic service is taxable.

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

Imposition. (1) The tax is imposed on receipts from every sale of the services of maintaining, servicing or repairing real property, whether inside or outside of a building.

\* \* \*

(4) The imposition of tax on services performed on real property depends on the end result of such service. If the end result of the services is the repair or maintenance of real property, such services are taxable. If the end result of the same service is a capital improvement to the real property, such services are not taxable.

*Example 9:* The replacement of some shingles or patching of a roof is a repair, but a new asphalt shingle roof is a capital improvement.

TSB-A-98(65)S  
Sales Tax  
September 9, 1998

Opinion

The roof inspection service performed by Petitioner, taken by itself, is a service subject to tax under Section 1105(c)(5) of the Tax Law. However, a roof inspection service performed by Petitioner which is done solely for the purpose of mandatory governmental code compliance, and is not related to or performed in conjunction with repairing, maintaining or servicing the real property is not subject to tax (see Elevator Service Companies, Adv Op Comm T&F, October 7, 1996, TSB-A-96(67)S). Where the purchaser of an inspection service is not the owner or lessee of the real property which is the subject of the inspection report, the charge paid by the purchaser of the report will not be subject to sales tax pursuant to Section 1105(c)(5) of the Tax Law as a charge for maintaining, servicing or repairing real property, property or land. See Joseph A. Matocha, Adv Op Comm T&F, March 21, 1990, TSB-A-90(12)S and National Elevator Inspection Services, Adv Op Comm T&F, September 17, 1993, TSB-A-93(49)S.

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.