

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

TSB-A-99(34)S
Sales Tax
June 24, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S990219B

On February 19, 1999, the Department of Taxation and Finance received a Petition for Advisory Opinion from Jeffrey J. Coren, CPA, 225 West 34th Street, Suite 2015, New York, New York 10122.

The issue raised by Petitioner, Jeffrey J. Coren, CPA, is whether plastic trash can liners purchased by janitorial services are subject to State and local sales and use taxes.

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

Cleaning contractors providing janitorial services purchase plastic trash can liners. Some of the trash can liners may be used by the janitorial service to remove trash from the premises. Other liners are placed in trash cans in offices and restrooms and are left on the customer's premises.

Applicable Laws and Regulations

Section 1101(b)(4)(i) of the Tax Law defines a "retail sale," in part, as follows:

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 526.6(c) of the Sales and Use Tax Regulations provides, in part:

Resale exclusion. (1) Where a person, in the course of his 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.

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Janitorial services are subject to tax under Section 1105(c)(5) of the Tax Law. In accordance with Section 1101(b)(4)(i) of the Tax Law and Section 526.6(c) of the Sales and Use Tax Regulations, tangible personal property purchased for use in performing the services subject to tax under Section 1105(c)(5) of the Tax Law may be purchased for resale, where the property so sold becomes a physical component part of the property upon which the services are performed or where the property is to be actually transferred to the purchaser of the service in conjunction with the performance of the taxable service. In this case, plastic trash can liners are purchased by cleaning contractors to remove trash from a customer's premises or to be placed in trash cans in offices and restrooms and left on the customer's premises to be picked up by the cleaning contractor when performing its janitorial services. Such liners do not become a physical component part of the property upon which the services are performed and are not actually transferred to the purchaser of the service in conjunction with the performance of the service. Rather, such plastic trash can liners are merely a supply used by the cleaning contractor in performance of its janitorial services. Therefore, the cleaning contractor may not purchase the plastic trash can liners for resale. Accordingly, the purchase of plastic trash can liners by janitorial services constitutes a retail sale of tangible personal property under Section 1101(b)(4) of the Tax Law, and is subject to sales and compensating use tax.

DATED: June 24, 1999

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

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