

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for an Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether its charges for recycling oil and oil-contaminated fluids (collectively “waste” or “oily waste”), as well as its charges for the collection of such waste, are subject to New York State and local sales tax.¹ We conclude that Petitioner’s charges for collecting and/or accepting oily waste are not subject to New York State and local sales tax, but that its charges to New York customers, if any, to collect and transport oily waste to other facilities for disposal are subject to tax.

Facts

Petitioner owns and operates a recycling terminal in New Jersey where it recycles oily waste. Examples of oily waste include used motor oil, and the byproducts of the operations of car washes, automobile dealerships, and manufacturing plants. When Petitioner obtains oily waste, it recycles it through a process that isolates the oil and removes most contaminants. Petitioner sells the recovered oil to third parties. Petitioner purifies any water that remains after the oil has been recovered and transfers it to county and/or municipal water purification plants.

Petitioner obtains oily waste from customers that either bring the waste to Petitioner’s terminal or hire Petitioner (either directly or as a subcontractor) to collect and remove the waste from various locations. Petitioner owns and operates its own trucks for this purpose. In either case, any material that is brought to Petitioner’s terminal is tested upon arrival to determine its contents. Materials that do not contain oil will be rejected by Petitioner and returned to its customer. Also, Petitioner will not accept any oily waste that contains contaminants that require a special method of disposal, such as caustic chemicals. Rather, Petitioner will either return this contaminated waste or, if required to do so, transport it to another (non-affiliated) facility for disposal. Otherwise, Petitioner recycles 100% of the oily waste it tests and accepts, and nothing is returned to its customer.

¹ Petitioner also asks about the taxability of charges assessed by non-affiliated third parties. However, 20 NYCRR 2376.1(a) authorizes the issuance of advisory opinions “at the request of any person who is or may be subject to a tax or liability under the Tax Law . . . ,” and explicitly prohibits the issuance of opinions “to any person or entity acting on behalf of an unidentified or hypothetical person or entity.” Accordingly, only Petitioner’s questions that relate to its own potential tax liability are considered herein.

The amount that Petitioner charges to collect and/or recycle oily waste is determined by a number of factors, including the volume of waste to be recycled, the type of impurities in the waste, Petitioner's overhead, and the pricing of its competitors. Further, when oily waste consists primarily of oil, the market value of this oil may affect Petitioner's pricing. When the market price of oil is high, for example, Petitioner may charge a lower fee to collect and/or accept waste, or it may not charge a fee at all. Moreover, if the market value of oil is high enough, Petitioner may even pay a customer for its waste.

Analysis

Generally, sales tax need only be collected on receipts from the sale of tangible personal property, and the services described in Tax Law § 1105. Among the services subject to sales tax are services for the maintenance, servicing or repairing of real property. Tax Law § 1105(c)(5). This includes trash removal services. *See, e.g.*, TSB-A-06(35)S. Whether a service is a trash removal service depends on whether items being collected may properly be considered "trash," which requires assessing if such items have any economic value. *See Matter of Marisol, Inc.*, Tax Appeals Tribunal (January 4, 1996); *Matter of Seneca Foods Corp.*, Tax Appeals Tribunal (July 6, 1995).

In *Matter of Marisol, Inc.*, Tax Appeals Tribunal (January 4, 1996), the Tax Appeals Tribunal found that a taxpayer engaged in the business of collecting and recycling chemical waste from its customers was not providing a trash removal service. Notably, the taxpayer in *Marisol* did not accept just any chemical waste from customers. Rather, it would test the waste it collected and accept only that which it could recycle. While the taxpayer sometimes charged its customers for the collection of their chemical waste, what was charged varied and depended, in part, on the market for the chemicals in the waste that the taxpayer would recover and sell. The Tribunal found that, under these circumstances, the chemicals being collected by the taxpayer had economic value and, thus, were not "trash" for purposes of Tax Law § 1105(c)(5).

Here, Petitioner's business appears to be very similar to the one described in *Marisol*. As noted above, Petitioner owns and operates a terminal in New Jersey where it recycles oily waste. As in *Marisol*, Petitioner is sometimes hired by customers to collect this waste, which Petitioner brings to its terminal for processing (recycling). Only oily waste is accepted by Petitioner for processing and, significantly, Petitioner's charges, if any, to collect and/or process such waste may depend, at least in part, on the market value of the oil in it. Petitioner sells the recycled oil it recovers. On these facts, we find that the oily waste that Petitioner collects and accepts from customers is not "trash" within the meaning of Tax Law § 1105(c)(5). Petitioner's charges for collecting oily waste that it accepts and processes, therefore, are not subject to New York State

and local sales tax. This is the case regardless of whether Petitioner is hired directly by the owner of the waste or is hired by another business on a subcontractor basis. *See* 20 NYCRR § 541.2(d); TSB-A-15(48)S.

Petitioner also accepts oily waste from customers who bring it to its terminal in New Jersey for processing. Petitioner's charges for processing the waste it accepts at its terminal are not subject to New York State and local sales tax for the reasons discussed above. Moreover, because such waste will necessarily have been delivered, tested and accepted by Petitioner in New Jersey in these instances, any "sale" that might occur between Petitioner and its customers would take place in New Jersey and, thus would not be subject to sales tax in New York State. 1.

Finally, while Petitioner recycles 100% of the oily waste it accepts, Petitioner indicates that, should it not be able to recycle waste it collects, it will either return the waste to its customer or transport it to a non-affiliate facility for disposal. It is not clear whether Petitioner charges the customer in these instances. To the extent that Petitioner returns to the customer the waste it collected and assesses a charge to cover its transportation costs, this would be a charge for a transportation service that is not subject to sales tax. However, if Petitioner collects waste from a customer in New York and does not return the waste to that customer, but rather transports it to another facility for disposal, this would constitute a charge for a trash removal service subject to sales tax, and Petitioner must collect sales tax on any charges it makes. *See* Tax Law § 1105(c)(5).

DATED: October 27, 2020

/S/

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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.