

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-00(28)S
Sales Tax
July 21, 2000

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S000412A

On April 12, 2000, the Department of Taxation and Finance received a Petition for Advisory Opinion from Strobel Service Corp., 62 Gould Avenue, Dobbs Ferry, NY 10522.

The issue raised by Petitioner, Strobel Service Corp., is whether Petitioner must collect sales tax and file sales tax returns in connection with the servicing and repairing of machine tools.

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

Petitioner services and repairs machine tools. Most of the machine tools it repairs are used by manufacturers who fabricate and produce tangible personal property. Petitioner also repairs and services machine tools for manufacturers that process steel.

Applicable Law and Regulations

Section 1101(b)(8) of the Tax Law provides, in part:

Vendor. (i) The term "vendor" includes: (A) A person making sales of tangible personal property or services, the receipts from which are taxed by this article. . . (emphasis added)

Section 1105(c)(3) of the Tax Law imposes sales tax on installing, maintaining, servicing or repairing tangible personal property, with certain exceptions described therein.

Effective March 1, 2000, Section 1105-B(b) of the Tax Law was amended by Chapter 407 of the Laws of 1999 to provide:

Receipts from every sale of the services of installing, repairing, maintaining or servicing the tangible personal property described in paragraph twelve of subdivision (a) of section eleven hundred fifteen of this article, including the parts with a useful life of one year or less, tools and supplies described in subdivision (a) of this section, to the extent subject to such tax, shall be exempt from the tax on sales imposed under subdivision (c) of section eleven hundred five of this article.

The effect of this amendment was to exempt the services described above from both State and local sales taxes.

Section 1115(a) of the Tax Law provides, in part:

Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(12) Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting

Section 1131(1) of the Tax Law provides, in part:

"Persons required to collect tax" or "person required to collect any tax imposed by this article" shall include: every vendor of tangible personal property or services....

Section 1134(a)(1) of the Tax Law provides, in part:

(i) Every person required to collect any tax imposed by this article ... commencing business or opening a new place of business. . . shall file with the commissioner a certificate of registration, in a form prescribed by the commissioner, at least twenty days prior to commencing business or opening a new place of business

Section 1136(a)(1) of the Tax Law provides:

Every person required to register with the commissioner as provided in section eleven hundred thirty-four whose taxable receipts, amusement charges and rents total less than three hundred thousand dollars, or in the case of any such person who is a distributor whose sales of automotive fuel total less than one hundred thousand gallons, in every quarter of the preceding four quarters, shall only file a return quarterly with the commissioner.

Section 533.3(d)(2) of the Sales and Use Tax Regulations provides:

Any person required to file quarterly returns whose total tax due for the four most recent quarterly periods for which data is available for such person within the

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most recent six quarters for which data is available did not exceed \$3,000, may be notified by the department or may elect to file returns annually in lieu of quarterly.

Opinion

Repair and maintenance services are included in Section 1105(c)(3) of the Tax Law as enumerated taxable services. Petitioner sells these services and, therefore, qualifies as a vendor under Section 1101(b)(8)(i)(A) of the Tax Law. Pursuant to Sections 1131(1), 1134(a)(1) and 1136 of the Tax Law, Petitioner, as a vendor defined in Section 1101(b)(8)(i), is required to be registered as a vendor, collect sales tax on the receipts from its services which are subject to tax and file returns with the Department of Taxation and Finance. Moreover, Petitioner must be registered as a vendor in order to furnish suppliers with a resale certificate (Form ST-120) for purposes of the resale exemption. See Section 1132(c) of the Tax Law and Section 532.4 of the Sales and Use Tax Regulations.

In accordance with Section 1105-B(b) of the Tax Law, the receipts from installing, repairing, maintaining or servicing machinery or equipment, parts, tools, or supplies for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating assembling, refining, mining or extracting are not subject to State and local sales and use taxes. Therefore, Petitioner will not be required to collect sales and use tax on the receipts from installing, repairing, maintaining or servicing machinery or equipment, parts, tools or supplies which are for use or consumption directly and predominantly in production for sale of tangible personal property, gas, electricity, refrigeration or steam, provided it accepts in good faith a properly completed exemption certificate within 90 days of the date the service was performed. See Section 1132(c) of the Tax Law and Section 532.4 of the Sales and Use Tax Regulations.

It is noted that Petitioner may only be required to file annual returns with respect to its services as provided in Section 533.3(d)(2) of the Sales and Use Tax Regulations if the taxes due are less than \$3,000 for the four most recent quarterly periods.

DATED: July 21, 2000

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

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