

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

TSB-A-05(44)S
Sales Tax
December 27, 2005

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S020412A

On April 12, 2002, the Department of Taxation and Finance received a Petition for Advisory Opinion from Woods Oviatt Gilman LLP, 2 State Street, 700 Crossroads Building, Rochester, New York, 14614.

The issue raised by Petitioner, Woods Oviatt Gilman LLP, is whether charges to provide hydrogeologic site condition information, including charges for the installation of temporary groundwater monitoring wells, are subject to sales tax.

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

XYZ, a New York corporation, is an environmental drilling company whose primary function is providing geologic site characterization reports to its customers. Geologic site characterization includes obtaining information pertaining to the depth of the water table from the land surface, the depth to bedrock from the land surface, the direction of flow of subsurface water, soil conditions, and underground water quality and quantity. XYZ performs this service by drilling and installing wells, providing both materials and labor. Various techniques are used to obtain site information including the use of direct push sampling and groundwater monitoring wells. The information obtained is used to define hydrogeologic conditions in a report that is XYZ's end product to its customers.

The installation of groundwater monitoring wells involves hollow stem auger drilling or rotary drilling techniques. Such wells are normally installed to depths determined in the field based on site conditions and the information being sought. XYZ's purpose in installing groundwater monitoring wells is to obtain information over time regarding the site conditions with respect to water quality and quantity and other hydrogeologic properties and to provide this information to the person requesting it. The resultant information is confidential and provided in written reports, which include, but are not limited to, diagrams showing the hydrogeologic conditions.

The groundwater monitoring wells are temporary in nature and are removed after the initial water sample is taken. No permanent evidence of a well's existence remains once it is removed.

Applicable law

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

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(3) Receipt. The amount of the sale price of any property and the charge for any service taxable under this article . . . valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts and also including any charges by the vendor to the purchaser for shipping or delivery . . . regardless of whether such charges are separately stated in the written contract, if any, or on the bill rendered to such purchaser

(4) 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 1105(a) of the Tax Law imposes sales tax on “The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.”

Section 1105(c) of the Tax Law imposes sales tax upon the receipts from every sale, except for resale, of certain enumerated services, including, in part, the following:

(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, except:

* * *

(iii) for installing property which, when installed, will constitute an addition or capital improvement to real property, property or land, as the terms real property, property or land are defined in the real property tax law as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter. . . .

* * *

(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 article. . . .

Opinion

XYZ charges its customers for performing services to determine the hydrogeologic condition of a real property site. XYZ determines the depth of the water table from the land surface, depth to bedrock from land surface, direction of flow of subsurface water, soil conditions, and underground water quality and quantity. XYZ is engaged in investigating, evaluating, measuring and plotting the subsurface characteristics of land, particularly with respect to subsurface water and its depth from the surface, amount, direction of flow, etc.

The confidential hydrogeologic site condition report prepared by XYZ constitutes the provision of a nontaxable service for XYZ's customer. XYZ is not providing any construction, design, or interior decorating services. XYZ is not making purchases of tangible personal property for or on behalf of customers or sales of tangible personal property to customers. XYZ's services as described above, including the furnishing of hydrogeologic site condition reports, are not services subject to sales tax under section 1105(c) of the Tax Law. Accordingly, XYZ is not required to collect sales tax on charges for its services.

In order for XYZ to obtain the data required for reports to its customers, XYZ has monitoring wells installed on the property that is to be evaluated. Such wells are used solely by XYZ to obtain data and do not appear to be used in remediation or other services to the real property. The wells are not intended to be permanent and are removed once XYZ has obtained the needed information.

XYZ is the sole user and consumer of the monitoring wells it installs as a prerequisite to performing its hydrogeologic services for its customers. XYZ is not engaged in the business of selling monitoring wells or well drilling services to its customers. Thus, the costs for the wells are a part of XYZ's expenses incurred in performing its services. The costs for the wells, whether or not itemized within the contracts and on the invoices provided to XYZ's customers, represent a component of XYZ's expenses. XYZ's charges for the installation of the monitoring wells, therefore, are included in XYZ's nontaxable charges for the sale of its services to its customers. XYZ's purchases of tangible personal property for use in installing the wells are not purchases for resale. See section 1101(b)(4)(i) of the Tax Law. All purchases by XYZ of tangible personal property, including all materials and equipment used to install and remove the

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temporary monitoring wells, are subject to sales and use tax pursuant to section 1105(a) of the Tax Law.

Were XYZ contracted by its customers for the purpose of installing monitoring wells for use by its customers or other service providers to perform long term monitoring or other services with respect to the customer's real property, the conclusions in this Opinion as to the taxability of XYZ's sales and purchases might be different. In such case, XYZ might be considered to be making taxable sales and installations of the monitoring wells under sections 1105(a) and 1105(c)(3) of the Tax Law.

It should also be noted that if XYZ performed the hydrogeologic services described in this Opinion in connection with the remediation of real property by XYZ for the purpose of mitigating soil or water contamination, or if XYZ's hydrogeologic services were performed for a contractor engaged in the remediation of real property, XYZ's hydrogeologic services might be subject to sales tax under section 1105(c)(5) of the Tax Law. See *KPMG Peat Marwick, LLP*, Adv Op Comm T & F, September 12, 1996, TSB-A-96(54)S; *Hall & Dettor, LLP*, Adv Op Comm T & F, November 30, 1999, TSB-A-99(53)S.

DATED: December 27, 2005

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