

**New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit**

TSB-A-13(17)S
Sales Tax
July 15, 2013

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S120828A

The Department of Taxation and Finance received a petition for Advisory Opinion from [REDACTED]. Petitioner asks whether security services it purchases as part of a capital improvement project are exempt from sales and use tax. We conclude that Petitioner must pay sales tax on the purchase of those security services.

Facts

Petitioner is a general contractor that performs commercial, retail and other non-residential capital improvement projects. In certain instances, the plans and specifications, building rules, and regulations and/or directives require that security and/or building engineer monitoring services be contracted for to ensure the building owner that certain tasks will be monitored while the Petitioner or its subcontractor is performing high risk work (i.e., demolition, welding, hot roofing, sprinkler work), since this work is performed overnight. Petitioner represents that, in these instances, security services are required, and the Petitioner would not be permitted to perform the work without a designated security company monitor in place.

Specifically, Petitioner is mandated by the building owner to hire the building owner's security contractor to monitor the work during these phases of the construction. Petitioner entered into a contract with the building owner's security contractor to provide the necessary security services at a fixed hourly rate. An executed Certificate of Capital Improvement was provided to the security contractor with the contract. Petitioner was billed sales tax for the security services provided by the security contractor.

Petitioner asks whether it should be required to pay sales tax for the purchase of the security services in this case.

Analysis

Section 1105(c)(8) imposes sales tax on the provision of

“[p]rotective and detective services, including, but not limited to, all services provided by or through alarm or protective systems of every nature, including, but not limited to, protection against burglary, theft, fire, water damage or any malfunction of industrial processes or any other malfunction of or damage to property or injury to persons, detective agencies, armored car services and guard, patrol and watchman services of every nature other than the performance of such services by a port watchman

licensed by the waterfront commission of New York harbor, whether or not tangible personal property is transferred in conjunction therewith.”

The state and local sales tax on protective and detective services was enacted in 1990. Prior to the enactment of section 1105(c)(8), New York City imposed sales tax on those same services. *See*, Administrative Code of City of New York, § 11-2040[a][2]. The New York City sales tax was at issue in the Tax Appeals Tribunal decision in Matter of MGK Constructors (TSB-D-92(23)S, March 5, 1992).

The facts in that decision are similar to the facts in this petition. MGK Constructors (MGK) had a contract with the New York City Department of Environmental Protection, for the building of part of a tunnel under the East River. Under that contract, MGK was required to provide security guard services. It subcontracted for those security guard services with another firm. The Tribunal concluded that the provision of the guard services constituted taxable services. The services were purchased by MGK and were essentially “one of many expense items which were necessary to satisfy the contractual obligation of constructing a water tunnel.” The Tribunal further decided that MGK was not purchasing the protective services for resale to the New York City Department of Environmental Protection, finding that the services were in the nature of an item of overhead, rather than a purchase for resale.

Like MGK, the Petitioner has a contract with a building owner to provide construction services. Also, like MGK, the Petitioner has contracted with a company for the provision of protective services. As the Tribunal concluded in Matter of MGK Constructors, those protective services are subject to sales tax and Petitioner is required to pay State and local sales taxes on its purchase of those services.

DATED: July 15, 2013

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

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.