

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-16(32)S
Sales Tax
December 2, 2016

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. S160104A

The Department of Taxation and Finance received a Petition for an Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether a charge by a cable company for the cabling needed to extend broadband service to property located outside of the cable company’s “primary service area,” constitutes a charge for a capital improvement to real property. We conclude that such charge is not a charge for a service to real property and, thus, not a charge for a capital improvement of such. However, we also find that this charge is part of the cable company’s receipts for the provision of broadband access service and, as such, conclude that it is not subject to New York State and local sales tax.

Facts

Petitioner operates a business in a relatively rural area of the State. In December 2015, Petitioner sought to obtain broadband service for use by this business. However, the property that Petitioner’s business is located on (Petitioner’s property) was not serviced by the local cable company at the time. Petitioner therefore entered into a “Contract for Service” with the cable company for the provision of broadband service, whereby the cable company agreed to extend its network to Petitioner’s property. According to this contract, which is for broadband service only, this extension (which is owned by the cable company) involved “the construction of 6/10 mile of coaxial cable plant,” and it required Petitioner to pay a “contribution in aid of construction” of \$15,000.00 plus sales tax (\$16,200.00 total) for it. The cable company is authorized to charge this “contribution in aid of construction” by its franchise agreement with the town where Petitioner’s property is located, which allows such a charge when service is extended to properties, like Petitioner’s, that are located both outside the cable company’s primary service area and in an area where there is a population density of fewer than 20 homes per mile. However, to the extent that others in the area connect to the extension in the five years following the completion of work, the contract entitles Petitioner to a reimbursement of this cost in an amount calculated pursuant to a pre-set formula.

Analysis

Sales tax applies to the receipts from every retail sale of tangible personal property (TPP), unless a specific exemption applies, and the receipts from every sale, except sales for resale, of certain enumerated services, including the maintenance, servicing or repair of real property. *See* Tax Law §§ 1105(a),(c)(5). Sales tax also applies to the receipts from every sale, other than sales for resale, of certain utilities. *See*

Tax Law §§ 1105(b). “Sale” is defined, in pertinent part, as “[a]ny transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume . . . for a consideration, or any agreement therefor.” Tax Law § 1101(b)(5). Receipts from the sale of Internet access service, however, including start-up charges and charges for the use of such service, are exempt from sales and use tax. *See* Tax Law § 1115(v); TSB-A-09(60)S.

In this case, Petitioner was charged a “contribution in aid of construction” for the extension of a cable system that will be owned by the cable company and used by it to provide broadband service to Petitioner’s property. In addition, while this charge is something that must be paid upfront by Petitioner, it is a charge that may be reimbursed “should others wish to connect service to [the] extension” in the future (i.e., within a five-year period). Under these circumstances, this “contribution in aid of construction” appears to be an up-front charge for an expense that the company will incur to provide broadband service to Petitioner’s property. As such, and because Petitioner’s contract with the cable company is for the provision of broadband service only, this charge is not for the purchase of TPP, a taxable service (including a service to real property), or for a capital improvement to real property. Rather, it is part of the cable company’s receipts for the provision of internet access service (*see* 20 NYCRR § 526.5[e]). Accordingly, we find that the charge paid by Petitioner for the extension of the cable company’s network to his property for the purpose of providing broadband service is not subject to sales tax.

DATED: December 2, 2016

/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.