

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

TSB-A-16(7)S
Sales Tax
March 16, 2016

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. S150615A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (hereinafter “Petitioner”). Petitioner asks whether its purchase of a piece of equipment is subject to sales and use tax where sales tax is collected by Petitioner on the repair services performed for its customers using the equipment.

We conclude that Petitioner’s purchase of equipment is subject to sales and use tax because it is a retail sale of tangible personal property that is not subject to any exemptions.

Facts

Petitioner is a New Car Franchise Dealer that repairs vehicles and sells parts and equipment. Petitioner purchased a Wheel Alignment Machine (“Equipment”) so that when a tire is sold or a car is repaired, the tire can be aligned and the repair can be completed by Petitioner. This work cannot be completed without the Equipment. Sales tax is collected on the repair, which includes the cost of the alignment.

Analysis

Tax Law § 1105(a) imposes tax upon the receipts from every retail sale of tangible personal property unless otherwise exempt. A retail sale includes a sale of tangible personal property to any person, other than for resale, or use of tangible personal property by that person in performing services subject to sales and use tax where the tangible personal property becomes a physical component part of the property or the property itself is actually transferred to the purchaser of the service in conjunction with the performance of the service. *See* Tax Law § 1101(b)(4). Included in the services subject to sales and use tax is the installing, maintaining, servicing or repairing of tangible personal property. Tax Law § 1105(c)(3).

The purchase of tangible personal property to be used in performing a taxable service where the property does not become a physical component part of the property serviced or is not transferred to the purchaser of the service is subject to sales and compensating use tax. *See* TSB-A-97(26)S. Where a business’s services are the maintaining, servicing or repairing of tangible personal property, the business’s purchases of equipment for use in performing such services are subject to State and local sales and use tax. *See* TSB-A-89(2)S.

Here, as acknowledged by Petitioner, the alignment and repair service it provides is a repair or maintenance to tangible personal property subject to sales and use tax. *See* TSB-A-89(2)S. Additionally, as the Equipment used by Petitioner in performing its service is not for resale or for use in performing a taxable service where it will become part of the property serviced or be transferred to the purchaser of the service, Petitioner's purchase of the Equipment constitutes a retail sale subject to sales and use tax. *See* TSB-A-97(26)S.

DATED: March 16, 2016

/S/

DEBORAH R. LIEBMAN

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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.