

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). Petitioner asks whether receipts from annual inspections of backflow prevention devices are subject to New York State and local sales and use taxes.

We conclude that inspection of backflow prevention devices solely for purposes of mandatory governmental code compliance are not subject to sales tax. However, inspections of those devices that are performed in conjunction with an installation or repair are taxable.

Facts

Certain property owners must install backflow prevention devices to prevent water from flowing back into a drinking water supply. Petitioner operates a business that installs and inspects backflow prevention devices. Petitioner notes that both the New York State Sanitary Code and New York City regulations require regular testing of backflow prevention devices by a certified device tester.

Analysis

New York State and local sales taxes are imposed on receipts from the service of installing tangible personal property, and the services of maintaining, servicing or repairing tangible personal property and real property. *See* Tax Law § 1105(c)(3), (5); TSB-A-13(39)S. The terms “maintaining, servicing and repairing” include “all activities that relate to keeping property in a condition of fitness, efficiency, readiness or safety, or restoring it to such condition.” 20 NYCRR 527.5 (a)(3), 527.7(a)(1). A diagnostic service that tests the function of a piece of equipment is generally considered a taxable maintenance service, even if no repair is performed. 20 NYCRR 527.5(a)(3), Example 6. However, inspections that are government mandated and are performed solely for code compliance and are not related to or performed in conjunction with installing, repairing, maintaining or servicing tangible personal property or real property are not subject to sales tax. *See* TSB-A-17(14)S; TSB-A-05(11)S; TSB-A-96(67)S.

The New York State Sanitary Code requires that backflow prevention devices be inspected by a certified tester “at the time of initial installation, after each repair, and annually thereafter.” 10 NYCRR 5-1.31(a)(3). The Rules of the City of New York have similar requirements. *See* 15 RCNY § 20-04(e)(1). Accordingly, Petitioner’s charges for annual inspections are considered government-mandated inspections for code compliance and will not be subject to sales tax, provided they are not performed in conjunction with the installation or

