

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”), [REDACTED]. Petitioner asks whether its food waste removal services are subject to sales tax. Additionally, Petitioner asks whether its purchase of a roll-off dumpster service is taxable. We conclude both the food waste removal services, and the dumpster service are subject to tax.

Facts

Petitioner provides food waste removal services, primarily to grocery stores, schools, manufacturers, restaurants, and third-party contractors. Petitioner operates specialized trucks to collect Source Separated Organics, essentially food scraps, from its customers. Customers are provided totes that are emptied into the dump body of Petitioner’s trucks. The truck’s contents are then disposed of at a permitted compost or anaerobic digestion facility. Petitioner does not own or operate these facilities. The materials are converted into a high-quality soil amendment, in the case of compost, and fertilizer, in the case of anaerobic digestion. Petitioner charges customers a rate per tote or flat monthly fee for this service. Petitioner provides this service directly to the consumer or as a subcontractor.

Petitioner also offers the transport and disposal of packaged organics from a customer’s distribution warehouse. Petitioner typically hires a third-party transport service to pick up the material and deliver it to a digester or compost facility. Once de-packaged, the organics are disposed of in the same manner as other food scraps. Any other recyclable materials are also recovered, including pallets, cardboard, and plastics, and recycled or upcycled accordingly. For this service, Petitioner typically charges a freight rate and per ton disposal rate for the material. The disposal rate varies depending on the complexity of the de-packaging. Petitioner may provide this service directly or as a subcontractor.

Additionally, Petitioner conducts special projects collection for materials that cannot be processed at a compost or anaerobic digestion facility. This service collects organics that cannot be processed by de-packaging machines. Petitioner may de-package smaller quantities, but usually this variety of waste is delivered to a landfill for solidification. Petitioner charges a freight rate and disposal cost for this service.

In most cases, Petitioner directly provides the service and bills the customer directly. However, sometimes Petitioner acts as a subcontractor for a third-party who arranges for the removal on behalf of the customer. Petitioner then invoices the third-party for the services.

Petitioner also inquires whether it must pay sales tax as the consumer of a roll off dumpster service. Petitioner hires a roll off dumpster service to collect the recyclables or trash produced by the food waste it delivers to anaerobic digester and de-packaging facilities. The dumpster service delivers a dumpster to the facility, and the digester facility's employees place recyclables or trash in the dumpster. After the materials are placed in the dumpster, the dumpster service hauls the materials away and delivers them to a landfill or recycling facility. The dumpster service fees are either absorbed into the cost of Petitioner's service or sent to the customer for reimbursement. The customer never pays the dumpster service directly.

Analysis

Tax Law § 1105(c)(5) imposes tax on receipts for "maintaining, servicing or repairing real property ...whether the services are performed in or outside of a building." The Sales and Use Tax Regulations specify that "trash and garbage removal" are among the services subject to sales tax under this section. 20 NYCRR § 527.7(a)(1).

The first inquiry is whether the food waste is trash or has value to Petitioner or its customer. *See Matter of Marisol, Inc.*, Tax Appeals Tribunal, January 4, 1996. If the waste has value to petitioner or the customer, the transaction is not trash removal, but rather a non-taxable transportation service. *Id.*; *see Matter of Seneca Foods Corp.*, Tax Appeals Tribunal, July 6, 1995.

In this matter, the materials have no value to the customers: they only seek to have it removed from their premises and they receive no compensation for the removal of the waste. To the contrary, the customer is charged for the waste removal in an amount equal to charges for trash disposal in a landfill. In addition, the materials are not sold by and have no value to Petitioner because the fees it pays for processing and disposal are roughly equal to, and sometimes exceed, the landfill disposal rate. As such, neither Petitioner nor its customer receives any pecuniary benefit from the food waste disposal. The fact that the food scraps ultimately will be converted into something of value, e.g., fertilizer or compost, is irrelevant here. Because the food waste does not have value to Petitioner or the customer, it is considered trash, and the service of removing it from the customer's premises is subject to sales tax. *See Matter of Auburn Steel*, Tax Appeals Tribunal, September 13, 1990.

Petitioner's services are integrated trash removal services. Transportation and processing of the materials are both integral parts of these services. All components of Petitioner's charges for these services, including charges for freight and disposal, are receipts subject to sales tax, regardless of whether the charges are separately stated. *See Matter of Penfold v. State Tax Commn.*, 114 AD2d 696, 697 [3d Dept. 1985].

Further, Petitioner must pay tax when it contracts for a roll-off dumpster service. Petitioner purchases the dumpster service for the collection and removal of recyclables and trash at the processing facilities where de-packaging takes place. This service is a trash removal service and is subject to tax. Tax Law § 1105(c)(5). Petitioner is not reselling a roll-off dumpster service as such to its customers. Rather, it is the consumer of this service, which it uses to provide a different, more comprehensive trash removal services. *See Matter of XO*

Communications v. Tax Appeals Tribunal, 183 AD3d 717 [3d Dept. 2020]. Therefore, Petitioner may not purchase the roll-off dumpster service for resale.

Additionally, when Petitioner acts as a subcontractor to a project on behalf of a third-party, it must still collect and remit sales tax unless Petitioner receives in good faith from the third-party contractor a properly completed exemption certificate. In order to be relieved from liability for collecting sales tax, Petitioner must obtain the exemption certificate within 90 days after the service is rendered. *See* 20 NYCRR 532.4(b)(2).

DATED: June 26, 2024

/s/

MARY ELLEN LADOUCEUR
Principal Attorney

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.