



Advisory Opinion: TSB-A-24(49)S

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] ("Petitioner"). Petitioner asks whether its receipts for hotel cleaning services are subject to New York State and local sales and use taxes.

We conclude that Petitioner's services do not constitute the performance of services to real property and, thus, the weekly per-employee fees Petitioner receives from its customers are not receipts subject to tax.

Facts

Petitioner contracts with businesses in the hospitality industry to manage their housekeeping personnel. Petitioner provided a sample Management Agreement ("Agreement") and a detailed schedule of job duties for the employees who perform cleaning services.

Under the Agreement, Petitioner and its customer agree that Petitioner is the customer's sole and exclusive agent to manage the customer's employees in the performance of cleaning services. The Agreement states that all persons providing services on behalf of the customer shall be under the customer's ultimate direction and control, subject to the supervision of Petitioner as the customer's agent. The customer is responsible for employee wages and other employment-related expenses, such as social security, unemployment insurance, worker's compensation and health and retirement benefits. The customer remains liable for the negligence of its employees as to all third-parties except Petitioner, and customer agrees to indemnify Petitioner for any claims made by the customer's employees. The customer also agrees to pay Petitioner a fee of \$110.00 per week for each employee that is on the weekly schedule.

Petitioner's services include training the customer's employees on how to perform cleaning services and supervising housekeeping staff. Such supervision includes providing daily briefings related to guest information (VIP's, special requests, etc.) and ensuring employees are provided with the necessary supplies. Petitioner also maintains complete payroll records for the customer and pays wages to the employees as agent of the customer from funds provided by the customer for this purpose.

Analysis

Generally, the receipts for sales of services to real property and tangible personal property, including maintenance, repair and cleaning services are subject to tax under Tax Law § 1105(c)(3) and (5). Maintaining, servicing and repairing are terms that are used to cover all activities that relate to keeping real property and tangible personal property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition. 20 NYCRR 527.5(a)(3) and 527.7(a)(1). Cleaning services, such as dusting

furniture, and cleaning and waxing of the walls and floors of a building, are taxable maintenance services. See 20 NYCRR 527.7(c)(3)(iv); TSB-M-91(4)(S).

Here, it is the customer's own employees who perform the cleaning services; Petitioner supervises those employees in performing those services and manages the customer's payroll as agent of the customer. Petitioner's services do not constitute the performance of services to real or tangible personal property for purposes of Tax Law § 1105(c) and, thus, the weekly per-employee fees Petitioner receives from its customer for such services are not subject to tax. Tax Law § 1105(c). In addition, the wages paid to the customer's employees for the performance of their cleaning services are not receipts subject to sales tax. See, 20 NYCRR 527.7(c)(2); TSB-A-93(52)S.

DATED: October 16, 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.