



Advisory Opinion: TSB-A-24(51)S

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether equipment it uses for asbestos abatement and selective interior demolition in a capital improvement to a facility owned by New York State is exempt from sales tax. Petitioner also asks whether such equipment used for projects involving facilities that are privately owned is subject to tax.

We conclude that Petitioner’s rental of equipment it uses for asbestos abatement and selective interior demolition is subject to New York sales tax.

Facts

Petitioner is a New York-based asbestos abatement and demolition company. Many of Petitioner’s projects are capital improvements to facilities owned by New York State.¹ When Petitioner is hired, the general contractor issues Petitioner a Form ST-120.1, *Contractor Exempt Purchase Certificate*. Petitioner then issues the same form to vendors it uses for that project. Petitioner attached to its petition a completed sample Form ST-120.1—*Contractor Exempt Purchase Certificate* (7/11) with checkbox “A” selected. Checkbox “A” indicates that Petitioner is claiming exemption for tangible personal property because it will be “used to improve real property or to maintain, service or repair... real property, owned by an organization exempt under Tax Law § 1116(a)....”

Petitioner disposes of asbestos waste generated from building abatement and demolition waste generated from selective interior demolition of buildings. Petitioner rents equipment that it uses in the abatement and/or demolition, such as lulls to transport the waste, negative air machines, showers and decontamination trailers.

Analysis

Tax Law § 1105(c) imposes tax upon the receipts from every retail sale of tangible personal property, unless otherwise exempt. See Tax Law § 1105(a). As relevant here, the term “sale” includes rentals and leases. See 20 NYCRR 526.7(2). In addition, sale of tangible personal property to a contractor or subcontractor for use or consumption in construction is a retail sale and subject to sales and use tax, regardless of whether the tangible personal property is to be incorporated into real property as a capital improvement. See Tax Law § 1101(b)(4)(i); 20 NYCRR 541.1(b); and 20 NYCRR 541.5(b)(1). Accordingly, the sale or rental of equipment to Petitioner for use in performing the asbestos removal or waste disposal services for privately owned entities is subject to tax. See Tax Law § 1105(a). And

¹ Petitioner did not ask whether its services constitute capital improvements and provided no facts on which such an opinion could be based. Thus, this Advisory Opinion assumes without deciding that the services described are capital improvements.

Petitioner must pay sales tax on the equipment it rents for use in providing asbestos removal services for privately owned entities at the time the equipment is rented.

Tangible personal property sold to a subcontractor for use in erecting, repairing, adding to, or altering a structure owned by New York State and certain other government or exempt organizations is exempt from sales tax when that tangible personal property becomes an integral component part of the structure or building. See Tax Law § 1115 (a)(15) and 20 NYCRR 541.3(d)(2)(i). The asbestos and waste removal equipment used here does not become an integral component part of the structure or building owned by New York State. Therefore, it is subject to sales tax, and Petitioner must pay tax to the vendor at the time the equipment is rented. Petitioner may not use Form ST-120.1, *Contractor Exempt Purchase Certificate*, to purchase waste removal or rent such equipment without payment of sales tax.

The Tax Law provides a refund or credit equal to the sales tax paid on tangible personal property used by the purchaser in performing certain services subject to tax under Tax Law § 1105(c), provided that such property becomes a physical component part of property on which such service is performed or is actually transferred to the purchaser of such service. See Tax Law § 1119(c); 20 NYCRR 526.6(c)(6). Tangible personal property used in asbestos removal that after exposure becomes contaminated by the asbestos and is no longer usable by Petitioner is considered to be transferred to the real property owner. See *Waste Management of New York*, TSB-D-91(19)S; *Chem-Nuclear Systems, Inc.*; TSB-D-89(2)S; and TSB-A-00(36)S. Whether Petitioner performs asbestos abatement services on buildings owned by New York State, other exempt entities or private parties, the equipment rented by Petitioner is not actually transferred to the real property owner, nor does Petitioner assert that it becomes contaminated so that it is no longer usable. Moreover, the refund or credit is only available for tangible personal property used in the performance of certain services that are taxable under Tax Law §1105(c). Capital improvements are expressly excluded from tax under Tax Law § 1105(c)(3) and (5). Therefore, Petitioner would not be eligible for a credit or refund of sales tax paid on waste removal services or equipment rentals it purchases in conjunction with a capital improvement. See TSB-A-2005(39)S.

DATED: October 23, 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.