

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-83(23)S
Sales Tax
May 20, 1983

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S820823A

On August 23, 1982 a Petition for Advisory Opinion was received from Spahr, Lacher, Berk & Naimer, 3000 Marcus Avenue, Lake Success, New York 10042.

The issue raised is whether the rental of construction equipment used in the performance of public works contracts with the State of New York and other governmental agencies would be subject to sales tax.

Petitioner describes a general contractor or subcontractor engaged in the performance of public works contracts with the State of New York and other governmental agencies. The contractor rents heavy construction equipment which is used in the performance of these contracts.

Section 1105(a) of the Tax Law imposes a tax on the receipts from the retail sale of tangible personal property. Section 1101(b)(5) of the Tax Law defines the term "sale" to include "Any. . . rental, lease . . ." The rental described by Petitioner thus constitutes a retail sale, and is subject to tax. While an exemption from such imposition of tax would be available where the party renting the property is the State of New York or other exempt governmental entity (Tax Law, § 1116 (a)(1)), such exemption is not available with respect to a contractor performing services for such an exempt entity. See in this regard section 528.16(a)(1), Example 6, of the Sales and Use Tax Regulations, which provides as follows:

Equipment rentals such as cranes, bulldozers, back hoes, etc.
for use in building a structure for an exempt organization are
subject to tax."

Accordingly, the rental of construction equipment under the circumstances described by Petitioner is subject to State and local sales taxes.

DATED: May 4, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau