

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

TSB-A-85(16)S
Sales Tax
May 29, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S840424A

On April 24, 1984, a Petition for Advisory Opinion was received from I & D Inc., 3647 Market Street, Clarkston, Georgia 30021.

The issue raised is whether the installation and dismantling services which Petitioner provides to exhibitors in the course of erecting and breaking down exhibits presented at trade shows and conventions are taxable services under New York State and local tax laws.

Petitioner's business consists of assembling and disassembling exhibits for persons and businesses that wish to advertise products and services at trade shows and conventions throughout the United States, including New York. The exhibits are generally constructed by exhibit shops or by the exhibitors themselves and may be used at several shows in different parts of the country. The exhibits which Petitioner assembles and disassembles are shipped to the point of use by interstate carriers in crates and disassembled parts. Once the shipment arrives at the show floor, Petitioner uncrates the exhibit, bolts it together and puts it in place. When the convention is over, Petitioner takes the exhibit apart and packs the parts into crates for shipment to the next destination. Petitioner does not alter or modify the parts of the exhibit, but simply provides labor for the assembly and subsequent disassembly of the exhibit. In the course of providing this service, Petitioner consumes miscellaneous items such as tape, nuts and bolts, the cost of which is billed to customers along with sales tax paid by Petitioner on these items.

Section 1105(c)(3) of the Tax Law imposed a tax on "Installing tangible personal property . . . not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith. . ." The sales tax regulations indicate that "installing means setting up tangible personal property or putting it in place for use." (20 NYCRR 527.5(a)(2)). In light of the plain meaning of the above regulation, the service provided by Petitioner is the taxable service of installing tangible personal property insofar as Petitioner provides labor to erect exhibits and set them in place at trade shows and conventions.

Petitioner, however, contends that the term "install" as used in section 1105(c)(3) of the Tax Law contemplates the addition of property with some degree of permanency. Petitioner argues that the tax should be imposed only if the installation is intended to be permanent.

However, two considerations militate against such a conclusion. First, section 1105(c)(3) provides an exemption for property which when installed becomes a capital improvement. Accordingly, the statute grants exemption only if the property is installed with a great degree of permanence.

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Secondly, it has been held that section 1105(c)(3) is applicable to the service of installing tangible personal property under circumstance where, by contract, the equipment installed was to be removed at the termination of the contract. In the Matter of Central Office Alarm Co. v. State Tax Commission, 58 AD2d 162, (3rd Dept. 1977). In this case, the installation service was held taxable under section 1105(c)(3) of the Tax Law even though the property was installed with no intention of permanence.

Additionally, it should be noted that the service of dismantling displays is not subject to sales tax since it is not one of the services taxed under section 1105(c) of the Tax Law. Thus, Petitioner is not required to collect sales tax on its charges for dismantling services if such charges are separately stated on Petitioner's bills to its customers. However, if Petitioner fails to separately state the charges for exempt services, Petitioner is required to collect sales tax on the entire amount of its charges.

DATED: May 14, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth herein.