

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

TSB-A-86(29)S
Sales Tax
July 17, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S860515A

On July 1, 1986, a Petition for Advisory Opinion was received from Thomas S. Murray, 123 Henry Avenue, Harrison, New York 10528.

The issue raised is whether the service of cleaning new cars and trucks, performed for a car dealer by persons other than its own employees, is subject to sales tax.

Petitioner, who is about to commence operating a car wash, states it will be cleaning only new, unregistered automobiles and trucks at the dealers premises. Petitioner inquires whether its service would be exempt from sales tax, if the dealer provides a Resale Certificate (Form ST-120).

Section 1101(b)(5) of the Tax Law defines the term "sale" to include "the rendering of any service, taxable under this article, for a consideration...".

Section 1105(c)(3) of the Tax Law imposes a tax on the services of maintaining, servicing and repairing tangible personal property not held for sale in the regular course of business.

Sales and Use Tax Regulation Section 527.5 provides, in part, as follows:

"(a)(3) Maintaining, servicing and repairing are terms used to cover all activities that relate to keeping tangible personal property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition.... Example 5: The charge for washing an automobile is taxable, whether the washing is performed manually or by a coin-operated machine.

* * *

(b)(2) Maintaining, servicing or repairing tangible personal property is not taxable if the property maintained, serviced or repaired is held for sale in the regular course of business."

Accordingly, Petitioner is not responsible for the collection of sales tax from a motor vehicle dealer purchasing Petitioner's services, if such dealer has supplied a Resale Certificate in proper form.

To be valid, the Resale Certificate must have all required entries completed by the purchaser; moreover, Petitioner must have received the document not later than 90 days after the rendition of the service. (Tax Law 1132). Where such a certificate has been furnished to the vendor, the burden of proving that the receipt is not taxable rests solely with the customer. Petitioner may accept a blanket Resale Certificate from customers making multiple purchases of the same kind of service. (20 NYCRR 532.4 [b][3], [d][4]).

TSB-A-86(29)S
Sales Tax
July 17, 1986

Additionally, it should be noted that Petitioner must pay sales tax on its purchases of tangible personal property (machinery, tools, supplies, etc.) used or consumed in the performance of its services, except for property which is actually transferred to the customer. In this regard, Petitioner may find it helpful to review Technical Services Bureau Memorandum Taxable Status of Supplies Used by Auto Body Repair Shops, May 11, 1981, TSB-M-81(8)S.

DATED: July 17, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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