

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

TSB-A-86-(40)S
Sales Tax
September 18, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S860203A

On February 3, 1986, a Petition for Advisory Opinion was received from Garrett General Aviation Services, 2221 Smithtown Avenue, Ronkonkoma, New York 11779.

The issue raised is whether warranty repairs performed in New York State are subject to tax.

Garrett Turbine Engine Co., an engine manufacturer, located in Phoenix, Arizona, sells engine warranties. The warranty is based on a specific number of flying hours. Payment is made directly to the Phoenix company on a monthly basis and is based on the actual hours flown for the month.

Each customer has the right to obtain warranty repairs from any of the Garrett General Aviation Services facilities, including one located in New York State. The customer does not pay any money directly to the facility performing the services. Instead, the facility doing the repair work submits a warranty claim to the manufacturer in Phoenix for an inter-company credit. This is a book entry only.

In some instances, the warranty repairs are done by the Phoenix facility. In these instances, the parts are shipped by the New York facility to the Phoenix facility for repair. Upon completion of the repairs, the Phoenix facility returns the parts to New York for installation. The billing procedure remains the same.

Section 1105(c)(3) of the Tax Law imposes a tax upon every sale, except for resale of the services of maintaining, servicing or repairing tangible personal property. However, it should be noted that services performed upon commercial aircraft that are exempt under Section 1115(a)(21) of the Tax Law are excluded from the tax imposed under Section 1105(c)(3) of the Tax Law.

Section 527.5 of the sales and use tax regulations of the State Tax Commission provides as follows with respect to service contracts and warranty work:

(c) Maintenance and service contracts. (1) The purchase of a maintenance or service contract is a taxable transaction.

(2) The vendor making sales of such contracts may purchase for resale any tangible personal property which is transferred to his customer in connection with the services rendered.

(3) Any charge made for services rendered in addition to the purchase price of the maintenance or service contract is taxable.

Example 1: A vendor selling home appliances also offers a 12-month extended service contract with unlimited parts and labor. The charge for the service contract is taxable.

Example 2: The same vendor also offers a service contract for the price of \$50 under which the purchaser will receive one service call at no additional charge, including parts and labor, and each additional service call will cost the purchaser \$5 for parts and labor. All the charges are receipts subject to tax.

(d) Warranty work. (1) Repair or maintenance services rendered, without charge to a customer under a warranty agreement are not taxable.

(2) The vendor performing the warranty services may purchase for resale any tangible personal property which is transferred to his customer in connection with the services rendered.

(3) Charges for services rendered which are not covered by the warranty are taxable.

(4) Where a manufacturer reimburses a vendor or repairman performing warranty work, the reimbursement is not taxable, as it was for resale. 20 NYCRR 527.5.

Since Petitioner charges its customers for services rendered, Petitioner's contracts with its customers are not considered exempt warranty contracts but are, instead, taxable service contracts.

Section 525.2(a) of the regulations of the State Tax Commission provides that the New York sales and use tax is a "destination tax", that is, the destination controls both the tax incident and the tax rate of a transaction. However, a question arises in this regard because the transaction involved herein does not have a single clear destination. Payments on the service contract are made to the company in Arizona for repairs performed partly or wholly in New York. When necessary, repair work to be ultimately furnished to customers in New York may be actually performed in Arizona. It is likely that some aircraft will require no repairs at all during some months. Furthermore, the provisions of the warranty contract are such that the payments bear no relation to the actual repairs performed but, instead, are based upon hours flown during the month.

It has been established by judicial decision in New York State that use tax may only be imposed upon an aircraft at the location at which the aircraft is hangered unless it is principally used elsewhere. (Xerox Corp. v. State Tax Commission, 71 AD 2d 177). It follows that the incident and rate of sales and use tax on a service contract on such an aircraft should be determined on the same basis.

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Accordingly, Petitioner is required to collect sales and use tax on all receipts from service contracts for all aircraft hangered in New York State even if some of the service is performed at a different location. Petitioner is not required to collect sales and use tax on service contracts for aircraft hangered outside of New York State even if some service is performed on the aircraft in the state. However, Petitioner's customer may be liable for tax under the contract if it is determined that the aircraft is principally used in New York State even though it is hangered elsewhere.

DATED: September 18, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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