

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

TSB-A-87(32)S  
Sales Tax  
September 21, 1987

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S870402A

On April 2, 1987, a Petition for Advisory Opinion was received from Owners & Tenants Electric Company Inc., 71 West 23rd St., New York, New York 10010.

The issue raised is whether a firm which is engaged in the business of metering and billing commercial tenants for their use of electricity has a fiduciary responsibility for the sales tax collected by it. In addition, if there is a difference between the amount of utilities purchased and the amount billed, Petitioner asks whether a use tax is due on such difference.

Petitioner meters electricity use for landlords. It bills the tenants, collects the monies and forwards the monies to the landlord or management firm. These monies are net of sales tax and cover the sales tax returns that Petitioner files on behalf of its clients. Many times there are discrepancies between the amount metered for self-use of Petitioner, the amount that shows as being metered to the tenants, and the amount metered or charged by Consolidated Edison, the general supplier of utilities in Manhattan.

Section 526.10 of the sales tax regulations states that "The term 'vendor' includes: (1)(i) A person making sales of tangible personal property or services, the receipts of which are subject to tax." (20 NYCRR 526.10(a)(1)(i)) Additionally, an independent contractor who represents a vendor of taxable goods or services is a vendor for sales tax purposes. Both the representative and his principal are jointly responsible for the collection and remitting of the taxes and the filing of returns. 20 NYCRR 526.10(a)(8),(f).

Section 1105(b) of the Tax Law imposes a tax on "[t]he receipts from every sale, other than sales for resale, of gas, electricity ...." (Emphasis supplied).

A purchase of a utility service which is not resold is subject to tax as a purchase at retail (20 NYCRR 527.2 (e)).

Accordingly, Petitioner is making sales which are subject to tax and is a vendor required to collect and remit sales tax on such sales. In addition, Petitioner must pay the sales tax on those purchases of utilities which are not resold to the customers of Petitioner's clients.

DATED: September 21, 1987

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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