

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

TSB-A-91 (43)S
Sales Tax
May 17, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910220B

On February 20, 1991, a Petition for Advisory Opinion was received from Certified Properties, Inc., 427 N. Cayuga St., PO Box 392, Ithaca, New York 14851.

The issue raised by Petitioner, Certified Properties, Inc., is whether management fees that are charged to clients are subject to State and local sales and use tax.

Petitioner manages apartments and houses for its clients. Petitioner's responsibilities include renting apartments and signing leases, collecting and depositing rents into clients' checking accounts, writing checks for clients to pay their bills on such properties, answering telephones and doing bookkeeping. A set fee is charged to the clients for performing these services.

Petitioner is also responsible for the purchasing and repairing of furniture and appliances, cleaning of apartments, and repairs and maintenance on the properties. Costs incurred for purchasing and repairing furniture and appliances are separately billed to clients, including sales tax. Moreover, maintenance and repairs are billed separately to clients and sales tax is collected on any labor and material used in a repair. The maintenance and repair fees Petitioner charges are \$14.00 per hour. Petitioner's employees earn \$7.00 to \$12.00 per hour. The sales tax is computed on the \$14.00 amount.

Section 1105(c) of the Tax Law imposes tax upon the receipts from every sale, except for resale, of certain enumerated services. The renting and signing of leases, collecting and depositing rents into clients' checking accounts, writing of checks for clients, answering telephones, and doing bookkeeping are not services enumerated under Section 1105(c) of the Tax Law and, therefore, the fees paid for such services are not subject to sales or use tax.

Section 527.7 of the Sales and Use Tax Regulations provides, in pertinent part, as follows:

(a) Definitions

(1) Maintaining, servicing and repairing are terms which are used to cover all activities that relate to keeping real property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition. Among the services included are services on a building itself such as painting; services to the grounds, such as lawn services, tree removal and spraying; trash and garbage removal and sewerage service and snow removal.

* * *

(b) Imposition

(1) The tax is imposed on receipts from every sale of the services of maintaining, servicing or repairing real property, whether inside or outside of a building.

Example 1: The replacement of broken windows is a repair to real property, which is taxable.

Example 2: Company A enters into an agreement to provide periodic maintenance services on elevators and escalators belonging to its customers. The contract provides for inspection, lubrication and the performance of necessary repairs. These services are taxable as maintaining, servicing of real property which is subject to the sales tax.

(2) All services of trash or garbage removal are taxable, whether from inside or outside of a building or vacant land.

Section 527.5(a) of the Sales and Use Tax Regulations provides, in part, as follows:

(a) Imposition

(1) The tax is imposed on receipts from every sale of the services of installing, maintaining, servicing or repairing tangible personal property, by any means including coin-operated machines, whether or not any tangible personal property is transferred in conjunction with the services.

(2) Installing means setting up tangible personal property or putting it in place for use.

Example 1: An individual pays for the installation of a washer and dryer to existing wiring and plumbing in his home. The charge for installation is taxable.

* * *

(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.

Section 526.6(c)(1) of the Sales and Use Tax Regulations provides as follows:

Where a person, in the course of his business operations, purchases tangible personal property or services which he intends to sell, either in the form in which purchased, or as a component part of other property or services, the property or

services which he has purchased will be considered as purchased for resale, and therefore not subject to tax until he has transferred the property to his customer.

Accordingly, pursuant to Section 526.6(c)(1) of the Sales and Use Tax Regulations, Petitioner may purchase furniture and appliances for resale. Sales or use tax will not be imposed at the time of purchase, but sales tax must be collected upon the resale to its clients. Pursuant to Section 526.6(c)(1) of the Sales and Use Tax Regulations, Petitioner may purchase for resale repair and maintenance service for the furniture and appliances where such charges are subsequently billed by Petitioner to its clients. Sales tax must be collected from clients on such billed repairs and maintenance. Where Petitioner repairs and maintains the clients' furniture and appliances, sales tax is due pursuant to Section 527.5(a) of the Sales and Use Tax Regulations.

Where Petitioner cleans the apartments and repairs and maintains the properties, sales tax is imposed pursuant to Section 527.7 of the Sales and Use Tax Regulations. Pursuant to Section 526.6(c)(1) of the Sales and Use Tax Regulations, Petitioner may purchase such services for resale where such charges are subsequently billed by Petitioner to its clients. Sales tax must be collected from clients on such billed services.

Section 527.1(b) of the Sales and Use Tax Regulations provides that:

(b) Taxable and exempt items sold as a single unit. When tangible personal property, composed of taxable and exempt items is sold as a single unit, the tax shall be collected on the total price.

Example: A vendor sells a package containing assorted cheeses, a cheese board and a knife for \$15. He is required to collect tax on \$15.

In accordance with said regulation, if Petitioner was to charge a single price for all of its services, the entire charge would be subject to sales tax. However, since Petitioner bills its management services separately from its purchasing, cleaning, repair and maintenance services, only that portion of the bill that represents the charges for the latter services are subject to sales tax.

DATED: May 17, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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