

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

TSB-A-91 (64)S
Sales Tax
September 20, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910624C

On June 24, 1991, a Petition for Advisory Opinion was received from Monroe Livingston Sanitary Land-Fill, Inc., 1241 South Road, Scottsville, New York 14546.

The issue raised by Petitioner, Monroe Livingston Sanitary Land-Fill, Inc., is whether Petitioner is required to pay sales tax on charges incurred by it for testing services and subsequent reports reflecting the results of such testing.

Petitioner operates a landfill. It engages the services of outside vendors to analyze and report the component levels of motor oil, groundwater, leachate, condensate and methane gas in ground samples. Printed reports are provided to Petitioner only.

Section 1105(c) of the Tax Law imposes sales tax on the receipts from every sale, except for resale, of the following services:

"(1) The furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons. . . .

Petitioner engages outside vendors to collect, compile and analyze information concerning the component levels of motor oil, groundwater, leachate, condensate and methane gas in Petitioner's landfill and to furnish Petitioner with reports thereof. Therefore, the outside vendors provide an information service. However, since the information provided on the reports only pertains to the contents within the ground in Petitioner's landfill, such information is considered to meet the requirement of being personal or individual in nature. Moreover, as the reports are only furnished to Petitioner, the requirement that the information is not or may not be substantially incorporated in reports furnished to other persons is also met.

Accordingly, the charges to Petitioner for analyzing the component levels of motor oil, groundwater, leachate, condensate, and methane gas and the furnishing of reports thereof are not subject to New York State and local sales or use tax pursuant to Section 1105(c)(1) of the Tax Law as such charges are for the sale of information which falls within the exclusion from tax provided under said section.

However, the charges for the service of analyzing the ground for certain component levels of pollutants and the issuing of reports of the findings may under some circumstances be subject to sales tax pursuant to Section 1105(c)(5) of the Tax Law.

Section 1105(c)(5) imposes a sales tax upon receipts from the services of "[m]aintaining, servicing or repairing real property. . .as distinguished from adding to or improving such real property, property or land, by a capital improvement as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one. . . ."

In George Industries, Inc., Adv Op Comm T&F, April 16, 1990, TSB-A-90(16)S the Commissioner of Taxation and Finance advised that while the charge for the service of monitoring air for asbestos content and the issuing of reports was not subject to sales tax pursuant to Section 1105(c)(1) of the Tax Law since the information furnished was considered personal and individual in nature and not substantially incorporated in reports furnished to other persons, such charge was subject to sales tax under Section 1105(c)(5) of the Tax Law as a charge for the service of maintaining, servicing or repairing real property where such service was not performed in connection with a capital improvement.

Accordingly, pursuant to Section 1105(c)(5) of the Tax Law and George Industries, Inc., supra, the charges to Petitioner by outside vendors for the services of analyzing the ground for certain component levels of pollutants and the issuing of reports in connection therewith are subject to sales and use tax as charges for maintaining and servicing of real property provided that such charges are not rendered in connection with a capital improvement.

DATED: September 20, 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.