

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

TSB-A-92 (36) S
Sales Tax
May 5, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920127B

On January 27, 1992, a Petition for Advisory Opinion was received from SSC Corp., 971 Waverly Avenue, Hallsville N.Y. 11742.

The issue raised by Petitioner, SSC Corp., is whether it may purchase for resale trash containers which are used in its trash removal service.

Petitioner is in the business of providing trash removal service. Petitioner's customers have the option to purchase or rent a trash container. The rental fee for the container is not dependent upon the frequency of service, tipping fees, or any other charges made by Petitioner. Petitioner's charges for the containers are separately stated on its billing to its customers.

Section 1105(a) imposes a tax upon "[T]he receipts from every sale of tangible personal property. . ."

Section 1101(b)(4)(i) defines, in part, a retail sale as "A sale of tangible personal property to any person for any purpose, other than (A) for resale as such,.

Section 1101(b)(5) of the Tax Law defines a sale as: "[A]ny transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor."

Section 526.7 of the Sales and Use Tax Regulations provides in part that:

(1) The words sale, selling or purchase mean any transaction in which there is a transfer of title or possession, or both, of tangible personal property for a consideration.

(2) Among the transactions included in the words, sale, selling or purchase are exchanges, barter, rentals, leases or licenses to use or consume tangible personal property. (Emphasis supplied)

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

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.

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Section 1105(a) of the Tax Law imposes a sales tax on "receipts from every retail sale of tangible personal property". However, where a purchaser acquires such property for the purposes of resale, which includes rental of the property, the purchase is exempt from sales tax in accordance with Section 1101(b)(4) of the Tax Law and Sections 526.6(c)(1) and 526.7(a)(1) of the Sales and Use Tax Regulations.

In connection with trash removal where the sale of property and service is sold jointly, the transaction must be viewed in its entirety. Thus in the instant case, for all practical purposes, the purchaser of the trash removal service cannot purchase the container separately from the service even though a separate price is shown on the invoice to its purchaser. Indeed it is Petitioner who is using the container to facilitate the removal of trash from its customer's premises as well as the customer who is using the container to store its trash while waiting for Petitioner to remove it. In situations where there is joint use of tangible personal property by the provider of the property and the receiver of the property, a resale of such property will not be found since it will not meet the exclusive test required for purchases to meet the resale exclusion. (See: American Locker v. Gallman, 32 N.Y.2d 175; Albany Calcium Light v State Tax Commission, 44 N.Y.2d 986; U-Need-A-Roll-Off Corp. v. State Tax Commission, 67 N.Y.2d 690.) Therefore Petitioner may not purchase its trash containers for resale. Waste Management of New York, Inc., Dec Tax App Trib, March 21, 1991.

DATED: May 5, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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