

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

TSB-A-93 (49)S  
Sales Tax  
September 17, 1993

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S930521A

On May 21, 1993, a Petition for Advisory Opinion was received from National Elevator Inspection Services, Inc., 120 South Central, Suite 1120, St. Louis, Missouri 63105.

The issue raised by Petitioner, National Elevator Inspection Services, Inc., is whether elevator inspections performed by Petitioner are subject to New York State and local sales and use taxes.

Petitioner, an out-of-state corporation duly authorized to do business in the State of New York, provides a service of inspecting elevators through observation and interview to determine, generally, if the elevators satisfy local and/or state codes and standards. The sole purposes of the inspections is for use as a guide to insurance underwriters and for proof of compliance with state codes.

The inspection services performed are not in conjunction with, related to or part of any maintenance or repairs done to the elevators. The inspection reports are not submitted to or used by the companies which maintain and service the elevators. Those companies all conduct their own inspections to determine what maintenance, repairs, lubrication and adjustments are necessary to keep the elevators in fit condition.

Petitioner does not install, maintain, repair, lubricate or grease any elevators. The employees of Petitioner do not carry tools, lubricant or grease. They do not conduct any repairs, nor would they if requested to do so. Petitioner's inspections are similar to, and performed in a similar manner as those provided by professional engineers and licensed architects, but in fact are not performed by professional engineers or licensed architects.

Section 1105(c) of the Tax Law, as amended June 1, 1990, provides, in part, as follows:

Sec. 1105. Imposition of sales tax.-- On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent upon:

\* \* \*

(c) The receipts from every sale, except for resale, of the following services:

\* \* \*

(5) Maintaining, servicing or repairing real property, property or land, as such terms are defined in the real property tax law, whether the services are performed in or outside of a building, 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 of this chapter, but excluding services rendered by an individual who is not in a regular trade or business offering his services to the public.

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

\* \* \*

(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 2: Company A enters into an agreement to provide 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. (emphasis added)

Similarly, Section 527.5 of the Sales and Use Tax Regulations imposes sales tax on the installing, repairing, servicing and maintaining of tangible personal property. While an elevator, once installed, is real property, the similarity in the imposition of sales tax upon such services for real and tangible property is to be noted.

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

Section 527.5 Installing, repairing, servicing and maintaining tangible personal property

(a) Imposition

\* \* \*

(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.

\* \* \*

Example 6: A company operates a diagnostic service in which it tests an appliance for a set fee, but does not repair the appliance. The charge for the diagnostic service is taxable. (emphasis added)

Where the purchaser of an inspection service is not the owner of the real property which is the subject of the inspection report, the charge paid by the purchaser for the report will not be subject to sales tax pursuant to Section 1105(c)(5) of the Tax Law as a charge for maintaining, servicing or repairing real property, property or land. See: Joseph A. Matocha, Adv Op Comm T & F, March 21, 1990, TSB-A-90(12)S.

Moreover, Declaratory Ruling 77-01, dated August 15, 1977, as it relates to interior cleaning and maintenance service contracts for the inspection, maintenance and repair of elevators and escalators is not relevant to this opinion, since the ruling preceded the amendments made to Section 1105(c) of the Tax Law, effective June 1, 1990 and no longer reflects the Tax Department's position as it applies to elevator and escalator maintenance.

In the instant case, Petitioner is providing a service of inspecting elevators through observation and interview to determine if the elevators satisfy local and/or state codes and standards. Pursuant to Section 1105(c)(5) of the Tax Law and Section 527.7(b)(1) of the Sales and Use Tax Regulations the inspection of elevators constitutes the maintaining of real property. Moreover, in accordance with the rationale set forth in Section 527.5(a)(3) of the Sales and Use Tax Regulations, the inspection of elevators is a diagnostic service for the keeping of the real property in a condition of fitness, efficiency, readiness and safety. Therefore, the elevator inspection services performed by Petitioner are subject to sales tax where they are performed for the owner or lessee of the real property.

It is noted, however, that if the purchaser of the elevator inspection service is not the owner or lessee of the real property which is the subject of the elevator inspection report, the charge paid by the purchaser for the report will not be subject to sales tax pursuant to Section 1105(c)(5) of the Tax Law as a charge for maintaining, servicing or repairing real property, Joseph A. Matocha, supra.

DATED: September 17, 1993

/s/  
PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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