

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

TSB-A-96 (2)S
Sales Tax
January 18, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S950724A

On July 24, 1995, a Petition for Advisory Opinion was received from Grace Borgenicht Gallery, Inc., 724 5th Avenue, New York, New York 10019.

The issue raised by Petitioner, Grace Borgenicht Gallery, Inc., is whether the charge paid to Pitney Bowes Corporation ("Pitney Bowes") for the service of having a postage meter reset (the "reset charge") is subject to State and local sales and use taxes.

Petitioner rents a "Postage by Phone" meter from Pitney Bowes. The Postage by Phone System eliminates the need for having the meter reset by the Post Office. Money is sent in advance to cover the cost of the postage needed. The postage meter is then reset by telephone by entering codes supplied by the Postage by Phone System. Pitney Bowes charges Petitioner a reset charge for the service of resetting the meter.

Petitioner submitted a copy of an invoice from Pitney Bowes for the meter rental, indicating reset charges, a copy of an account statement of a Postage by Phone account used to pay for postage, and a copy of the meter reset instructions, as part of its Petition for Advisory Opinion.

Section 1105 of the Tax Law provides, in part, as follows:

Sec. 1105. Imposition of sales tax.--... there is hereby imposed and there shall be paid a tax ... upon:

* * *

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

* * *

(3) Installing tangible personal property, excluding a mobile home, or maintaining, servicing or repairing tangible personal property, including a mobile home, not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith... (emphasis added)

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.

* * *

(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. (emphasis added)

The charge paid by Petitioner to Pitney Bowes to reset the meter by telephone is representative of a charge paid to restore the meter to a condition of readiness. Accordingly, pursuant to Section 1105(c)(3) of the Tax Law and Section 527.5 of the Sales and Use Tax Regulations, the reset charge is subject to State and local sales and use taxes.

DATED: January 18, 1996

/s/
DORIS S. BAUMAN
Director
Technical Services Bureau

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