

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

TSB-A-96 (57)S
Sales Tax
September 23, 1996

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S960402A

On April 2, 1996, the Department of Taxation and Finance received a Petition for Advisory Opinion from Michael Gross, 19 Fairgreen Drive, Amherst, New York 14228.

Petitioner, Michael Gross, raises the following issues regarding the application of sales tax to the service described in the hypothetical situation below:

1. Whether the service described in the hypothetical situation is a taxable service of trash removal, as defined in Section 1105(c)(5) of the Tax Law, regardless of the ultimate destination of the waste.
2. Whether the ultimate destination of the waste (within New York State or out-of-state) has an impact on the amount of sales tax to be charged when no processing or treatment is performed upon the waste.
3. Whether separately stating the charges for pick up, transportation and disposal of the waste on the sales invoice affects the amount of sales tax to be charged.

Petitioner submits the following hypothetical situation as the basis for this Advisory Opinion:

X Company, located in New York State, contracts with Y Company to pick up and dispose of X Company's waste. Y Company picks up the waste and subsequently transports the waste to Ohio and merely dumps the waste in a landfill. There is no treatment or processing performed upon the waste. The waste is transported 75 miles within New York, 50 miles within Pennsylvania and finally 100 miles within Ohio to the landfill.

Applicable Law and Regulations

Section 1101(b)(3) of the Tax Law defines "receipt," in part, as follows:

Receipt. The amount of the sale price of any property and the charge for any service taxable under this article, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts and also including any charges by the vendor to the purchaser for shipping or delivery regardless of whether such charges are separately stated in the written contract, if any, or on the bill rendered to such purchaser and regardless of whether such

shipping or delivery is provided by such vendor or a third party, but excluding any credit for tangible personal property accepted in part payment and intended for resale

...

Section 1105(c)(5) of the Tax Law imposes tax upon receipts from every sale, except for resale, of the following services:

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

Section 527.7(a) of the Sales and Use Tax Regulations provides, in part:

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.

Section 527.7(b) of the regulations provides, in part:

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.

* * *

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

Opinion

The collection, hauling and disposal of waste constitute an integrated trash removal service. In the hypothetical situation presented by Petitioner, Y Company is conducting an integrated trash removal service when it picks up, removes and dumps X Company's waste from X Company's site in New York. Receipts from the sale of this service are receipts from the service of maintaining real property, property or land and are subject to tax pursuant to Section 1105(c)(5) of the Tax Law, regardless of the ultimate destination of the waste. (See, Rochester Gas and Electric v State Tax Commn., 71 NY2d 931.)

The ultimate destination of the waste (i.e., Ohio) and the manner in which the charges are set forth on the sales invoice (i.e., in aggregate or itemized) have no impact on the amount of sales tax to be charged. The sales tax is imposed on the entire receipt from the sale of the integrated trash removal service at the combined New York State and local sales tax rate in effect in the taxing jurisdiction where the real property is serviced; that is, the jurisdiction in which X Company's real property, property or land is located. (See, Cecos Intl. v State Tax Commn., 71 NY2d 934; Penfold

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v State Tax Commn., 114 AD2d 696.) No apportionment is applicable. The situs for the taxable event is the local jurisdiction and state in which the real property, property or land being serviced is located.

The constitutional concerns raised in the matters of General Electric (Tax App Trib, March 5, 1992, TSB-D-92(22)S), Waste Conversion (Tax App Trib, August 25, 1994, TSB-D-94(31)S) and Bristol-Myers (Tax App Trib, September 15, 1994, TSB-D-94(35)S) regarding the removal of waste from New York State are not at issue in this Opinion. Unlike the facts applicable in those matters, Y Company does not process or treat waste, but merely disposes of the waste.

DATED: September 23, 1996

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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