

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

TSB-A-97(18)S  
Sales Tax

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S961210C

On December 10, 1996, the Department of Taxation and Finance received a Petition for Advisory Opinion from Richard T. Smokowski, 102 Magnolia Street, Lackawanna, NY 14218.

The issue raised by Petitioner, Richard T. Smokowski, is whether the inspection services he performs on medical and dental x-ray equipment as a certified radiation equipment safety officer ("CRESO") of the New York State Department of Health are subject to sales and compensating use tax.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner is a certified radiation equipment safety officer ("CRESO") of the New York State Department of Health. Petitioner, an independent contractor, is certified by the Department of Health to provide inspection services for medical and dental x-ray equipment as required by 10 NYCRR, Part 16 of the New York State Sanitary Code. Petitioner does not provide any maintenance or repair services on the x-ray equipment in conjunction with the testing and inspection he performs. Petitioner provides an individual report to his customer describing the testing services performed on the customer's equipment, the results of the tests and Petitioner's recommendations.

Applicable Law and Regulations

Section 1105 of the Tax Law imposes sales tax, in part, 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 . . .

Section 527.5(a) of the Sales and Use Tax Regulations provides, in part:

\* \* \*

(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.

Opinion

Petitioner is a *certified radiation equipment safety officer* of the New York State Department of Health. A *certified radiation equipment safety officer* is defined as "an individual who holds an unexpired certificate as a radiation equipment safety officer issued by the department." (10 NYCRR 16.2(a)) The inspection services Petitioner performs are required by the New York State Sanitary Code, Title 10 NYCRR, Part 16. This Part applies to all radiation equipment and radioactive material within the jurisdiction of the New York State Department of Health.

The sole purpose of the inspection services provided by Petitioner is to demonstrate compliance with State codes. Inspection services performed solely for purposes of mandatory governmental code compliance, and which are not related to or performed in conjunction with repairing, maintaining or servicing tangible personal property or real property are not enumerated taxable services. Therefore, the receipts received from the performance of these services are not subject to State and local sales and use taxes (see Elevator Service Companies, Adv Op Comm T&F, October 7, 1996, TSB-A-96(67)S). Inspection services of tangible personal property performed for other than code compliance purposes are subject to tax pursuant to Section 1105(c)(3) of the Tax Law.

DATED: March 27, 1997

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

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