

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

TSB-A-97(29)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S970403A

On April 3, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from Sony Electronics Inc., 1 Sony Drive, Park Ridge, NJ 07656.

The issue raised by Petitioner, Sony Electronics Inc., is whether it is required to collect and remit state and local sales taxes on the receipts from the sale of its equipment maintenance agreements based on the total contract price at the time the agreements are executed or in monthly or quarterly installments over the agreed upon "payment terms" of the contract.

Petitioner sells electronic equipment and related equipment maintenance agreements. The terms of the agreements range from one to three years. Petitioner submitted a sample of its Customer Services Master Agreement as part of the petition. The agreement indicates that repair and maintenance services on the equipment will be provided during a specified term for a specified fee. The customer may elect to pay the fee on an annual or periodic (monthly or quarterly) basis under Section 5.1 of the agreement. The services available under the terms of the agreement include labor and parts necessary to restore the equipment to operational conditions, routine checks of operations and minor adjustments performed by a representative of Petitioner. Upon execution of the contract, Petitioner's customers are obligated to pay the total specified fee whether or not any repair services are actually required to be performed.

Applicable Law and Regulations

Section 1101(b)(3) of the Tax Law defines the term receipt, in part, to mean:

The amount of the sale price of any property and the charge for any service taxable under this article

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) . . . maintaining, servicing or repairing tangible personal property . . . not held for sale in the regular course of business. . . .

Section 1132 of the Tax Law provides, in part:

(a) Every person required to collect the tax shall collect the tax from the customer when collecting the price, amusement charge or rent to which it applies. . . .

* * *

(d) The tax commission may provide by regulation that the tax upon receipts from sales on the installment plan may be paid on the amount of each installment and upon the date when such installment is due.

Section 527.5 of the Sales and Use Tax Regulations applies to Petitioner's transaction and provides, in part:

(c) *Maintenance and service contracts.* (1) The purchase of a maintenance or service contract is a taxable transaction.

Section 525.2(a) of the Sales and Use Tax Regulations provides, in part:

(2) The sales tax is a "transactions tax," liability for the tax occurring at the time of the transaction. Generally speaking, the taxed transaction is an act resulting in the receipt of consideration for the transfer of title, or possession or both to property or rendition of services from one person to another. The time or method of payment is immaterial, since the tax becomes due at the time of transfer of property or rendition of service. (Emphasis added)

Section 532.1(a) provides, in pertinent part:

Time of collection. (1) Every person required to collect the tax shall collect the tax from the customer when collecting the price, amusement charge or rent to which it applies.

Opinion

The sales of Petitioner's maintenance agreements are taxable transactions. Petitioner's customers have, in essence, purchased the right to receive services should they be necessary throughout the life of the contract. Petitioner's billing practices for this right are immaterial with regard to collection and remittance of the tax. The liability for the tax occurs at the inception of the agreement, and the tax is imposed on the full contract price at that time. Although Petitioner allows its customers to pay the total price on an installment basis, there has been only one transaction, not several individual transactions. It should be noted that the Sales and Use Tax regulations make no provision for the tax to be paid on a periodic basis with respect to installment sales.

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Accordingly, Petitioner is required to collect and remit the state and local sales taxes imposed on the total value of the contract at the inception of the agreement.

DATED: May 17, 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.