

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-98(29)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S980213A

On February 13, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Service Station Vending Equipment, Inc., P.O. Box 334, New Hyde Park, NY 11040.¹

The issues raised by Petitioner, Service Station Vending Equipment, Inc., are the following:

1. Whether sales of the service from coin-operated vacuum machines are exempt from sales tax after December 1, 1997.
2. Whether sales of the service from coin-operated air machines, used to inflate tires, are exempt from sales tax after December 1, 1997.

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

Petitioner's business consists of coin-operated vacuum machines for motor vehicles and coin-operated air machines used to inflate automobile tires. These two types of machines are installed in the following three types of businesses:

1. Self service coin-operated car wash facilities
2. Gasoline stations
3. Car wash facilities, other than coin-operated, which do not provide vacuuming as part of the price of a car wash

The coin-operated vacuum service is the same self service function at the gasoline stations and the non-coin operated car wash facilities as it is at the coin-operated car wash facilities. The other type of machine installed by Petitioner is the coin-operated air machine used to inflate automobile tires. These machines are also located at coin-operated car washes, gasoline stations and non-coin operated car wash facilities.

Applicable Law and Regulations

Section 1105 (a) of the Tax Law imposes sales tax on the receipts from every retail sale of tangible personal property, except as otherwise provided.

¹ On October 27, 2006, this address was substituted for the address originally given in Opinion.

Section 1105 (c) of the Tax Law imposes a sales tax on 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 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...

Subdivision (t) of Section 1115 of the Tax Law, effective December 1, 1997, provides:

(t) Receipts of a car wash facility from every sale, except for resale, of the service of washing, waxing, or vacuuming a motor vehicle or other tangible personal property and consideration given or contracted to be given for such service at such a facility, where the purchaser or user of the service washes, waxes or vacuums such person's motor vehicle or other tangible personal property at such a facility by means exclusively of coin-operated equipment at such facility of the vendor providing the service and neither the vendor nor any employee of the vendor assists the purchaser in washing, waxing, or vacuuming the vehicle or other tangible personal property, shall be exempt from tax under this article, to the extent of the amount of money or value, in money, of tokens deposited in such coin-operated equipment by the purchaser of the service. For purposes of this subdivision, the term "coin-operated" includes coin-operated, currency-operated or token-operated and the term "motor vehicle" shall mean a motor vehicle as defined in subdivision (f) of section eleven hundred thirty-two of this article.

Section 527.5 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.

Section 528.1 of the Sales and Use Tax Regulations provides, in part:

(c) Exemptions from the sales and compensating use tax are strictly construed. For an exemption to be allowed, it must clearly appear that a transaction is eligible for the exemption. The burden of proving nontaxability is on the person claiming the exemption.

Opinion

Effective December 1, 1997 receipts from coin-operated equipment located at a car wash facility used to wash, wax or vacuum a motor vehicle are exempt from sales tax. Therefore, Petitioner's sales of services from coin-operated vacuum machines at self-service car wash facilities

are exempt from sales and use tax. Petitioner's sales of services from these same vacuum machines located at other car wash facilities are also exempt from tax, provided that the vendor or an employee of the vendor does not vacuum or assist in vacuuming the vehicle. Petitioner's receipts from the sales of the vacuum machine service located at gasoline stations would not qualify for this exemption unless the gasoline station has a car wash facility located on its premises, since Section 1115(t) of the Tax Law states that the service must be at a car wash facility.

Receipts from the sales of services rendered by tire inflating machines are taxable. Section 1115(t) of the Tax Law only exempts the services of washing, waxing and vacuuming a motor vehicle. Inflating of tires is maintaining tangible personal property to keep it in a condition of fitness, efficiency, readiness or safety, and is therefore taxable under Section 1105(c)(3) of the Tax Law.

It should be noted that in the case of any vacuum machine which accepts debit or credit cards as well as coins, currency or tokens, the sales made with debit or credit cards would not be exempt from sales and use tax. (See Technical Services Bureau Memorandum, Summary of Sales Tax Changes 1997 Budget Legislation, November 28, 1997, TSB-M-97(12)S)

DATED: 5/14/98

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

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