

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

TSB-A-98(3)S  
Sales Tax

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S951127A

On November 27, 1995, a Petition for Advisory Opinion was received from Underwater Consultants International Inc., 11390 Transit Road, East Amherst, New York 14051.

The issue raised by Petitioner, Underwater Consultants International, Inc., is whether the services performed by Petitioner are subject to sales tax.

Petitioner makes the following submission of facts.

Petitioner frequently performs subconsultant services for owners' agents on projects including pipelines, sewer treatment facilities, dams, etc. Petitioner performs underwater and topside inspection, consulting and reporting services for engineering companies who are retained by federal, state, city and municipal agencies on projects owned by these government entities. Petitioner is not a licensed engineer.

Petitioner generally works for and is paid by the engineering firm who works directly for the government owner. Petitioner performs this work with the authorization of the government agency, who is the beneficiary of Petitioner's efforts. The work Petitioner performs in this case is not construction but is underwater inspection with follow up reporting and recommendations on the results of that inspection. At other times, Petitioner observes and reports on all phases of a construction project for an engineering company.

Applicable Law and Regulations

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

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, as distinguished from adding to or improving such real property, property or land, by a capital improvement as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter, but excluding services rendered by an individual who is not in a regular trade or business offering his services to the public.

Section 527.7(b)(4) of the Sales and Use Tax Regulations provides:

The imposition of tax on services performed on real property depends on the end result of such service. If the end result of the services is the repair or maintenance of real property, such services are taxable. If the end result of the same service is a capital improvement to the real property, such services are not taxable.

Section 1116(a) of the Tax Law provides, in part:

Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

(1) The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services or property of a kind not ordinarily sold by private persons;

(2) The United States of America, and any of its agencies and instrumentalities, insofar as it is immune from taxation where it is the purchaser, user or consumer, or where it sells services or property of a kind not ordinarily sold by private persons....

### Opinion

In the present case, Petitioner is providing its clients with reports on underwater and topside inspections of construction projects for government agencies. If the inspection, consulting and reporting services performed by Petitioner are part of repairs to real property being made by Petitioner's client, then Petitioner's services would be considered to be the repair or maintenance of real property under Section 1105(c)(5) of the Tax Law and Section 527.7(b)(4) of the Sales and Use Tax Regulations. See George Industries, Inc., Adv Op Comm T&F, April 16, 1990, TSB-A-90(16)S; Monroe Livingston Sanitary Land-Fill, Inc., Adv Op Comm T&F, September 20, 1991, TSB-A-91(64)S. In this case, Petitioner's services would be subject to sales tax, unless performed solely for purposes of demonstrating compliance with government building or construction codes, or purchased for resale. However, if Petitioner's services are sold to a client who is performing a capital improvement project, then Petitioner's services would not be subject to tax. See Section 527.7(b)(4) and Part 541 of the Sales and Use Tax Regulations. If Petitioner were to sell its services to an exempt government entity, the sale would not be subject to sales tax. See Part 529 of the Sales and Use Tax Regulations.

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In order to make a tax exempt sale of its services or tangible personal property, Petitioner should receive in good faith from the purchaser a properly completed exemption certificate, or documentation indicating that the purchaser is an exempt government entity, within 90 days after the performance of the service. See Section 1132(c) of the Tax Law and Part 532 of the Sales and Use Tax Regulations.

DATED: February 2, 1998

/s/  
JOHN W. BARTLETT  
Deputy Director  
Technical Services Bureau

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