

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

TSB-A-98(64)S  
Sales Tax  
September 9, 1998

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S971017A

On October 17, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from Kost Tire Distributors, Inc., 335 Court Street, Binghamton, New York 13904.

The issue raised by Petitioner, Kost Tire Distributors, Inc., is whether tire disposal services may be purchased by it for resale.

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

When customers purchase new tires from Petitioner, they bring their vehicles to Petitioner. Petitioner removes the old tires from their vehicles and mounts new tires. Petitioner's customers then have the option of keeping their old tires or paying to have them disposed of. If a customer decides to dispose of the tires, they turn the tires over to Petitioner who then charges the customer a disposal fee and disposes of the tires. Petitioner disposes of the tires through a certified scrap tire processor, which removes the tires from Petitioner's premises.

Applicable Law and Regulations

Section 1105 of the Tax Law provides, in part:

Imposition of sales tax.---On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent upon:

\* \* \*

(c) The receipts from every sale, except for resale, of the following services:

\* \* \*

(5) 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(a)(1) of the Sales and Use Tax Regulations provides:

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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.

Opinion

Petitioner is charging its customers a fee for disposing of their tires. Petitioner then hires a certified scrap tire processor to remove the tires from its property and process and dispose of them. The certified scrap tire processor performs a trash removal service for Petitioner that is subject to tax under Section 1105(c)(5) of the Tax Law. Petitioner does not purchase this service for resale. The disposal fee that Petitioner charges its customers is not for the performance of a trash removal service or any other enumerated taxable service under Section 1105(c) of the Tax Law. Petitioner, therefore, must pay sales tax on its purchase of the services described above from the scrap tire processor.

DATED: September 9, 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.