

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

TSB-A-98(82)S
Sales Tax
December 2, 1998

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S980909A

On September 9, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Commonwealth Electrical Inspection Service, Inc., 176 Doe Run Road, Manheim, PA 17545.

The issue raised by Petitioner, Commonwealth Electrical Inspection Service, Inc., is whether it is required to register as a vendor and collect and remit New York State and local sales tax on receipts from its performance of certain electrical inspections called "surveys."

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

Petitioner performs electrical inspections for commercial, industrial and new and remodeled residential construction. These inspections are authorized by local municipalities, and must comply with their regulations.

Petitioner also performs electrical inspections which are requested by homeowners, potential buyers or real estate agents for pending residential real estate sales. Petitioner visually inspects the existing residential structures for safety issues and quality of usability, and provides its customers with written reports of its findings. No repair services are performed by Petitioner for its customers. The customers generally rely on the inspection reports to decide if price adjustments or repair of deficiencies are necessary before the real estate sales take place. Petitioner refers to these inspections as "surveys," and it is this type of inspection which is in question in this Advisory Opinion.

Applicable Law and Regulations

Section 1101(b)(8)(i) of the Tax Law defines the term "vendor," in relevant part, as:

(A) A person making sales of tangible personal property or services, the receipts from which are taxed by this article. . . .

Section 1105(c) of the Tax Law imposes sales tax, in part, upon:

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 1131(1) of the Tax Law defines “[p]ersons required to collect tax,” in part, as “every vendor of tangible personal property or services”

Section 1134(a)(1) of the Tax Law provides, in part:

(i) Every person required to collect any tax imposed by this article ... shall file with the commissioner a certificate of registration, in a form prescribed by the commissioner, at least twenty days prior to commencing business or opening a new place of business

Section 526.10(a)(1)(ii) of the Sales and Use Tax Regulations provides:

A person making sales of services, the receipts from which are subject to tax, is a vendor. This may include a person entering this State from outside the state to perform services on property located in this State.

Example 4: S Company (a shopping mall management company) hires B Company (a parking lot maintenance company located in New Jersey) to patch, seal and line-strip the parking lots of nine malls managed by S Company at various locations throughout New York. B Company is a vendor because it is providing a service in New York subject to tax.

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

Imposition. (1) The tax is imposed on receipts from every sale of the services of installing, maintaining, servicing or repairing tangible personal property. . . .

* * *

(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. (Emphasis added)

Section 527.7 of the Sales and Use Tax Regulations provides, in part:

(a) *Definitions.* (1) *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

(2) Real property, property and land are defined as in subdivision 12 of section 102 of the Real Property Tax Law. Among the items considered in this classification are:

* * *

(ii) buildings and structures erected upon, under or above land, or affixed thereto:

* * *

(v) mains, pipes and tanks for conducting steam, heat, water, oil, gas, electricity; and

(vi) boilers, heating, ventilating, lighting apparatus, plumbing.

* * *

(b) *Imposition.* (1) The tax is imposed on receipts from every sale of the services of maintaining, servicing or repairing real property, whether inside or outside of a building.

* * *

Example 2: Company A enters into an agreement to provide periodic maintenance services on elevators and escalators belonging to its customers. The contract provides for inspection, lubrication and the performance of necessary repairs. These

services are taxable as maintaining, servicing of real property which is subject to the sales tax. (Emphasis added)

Opinion

Petitioner provides electrical inspection services performed through visual observation for safety and usability purposes. Pursuant to Section 1105(c)(5) of the Tax Law and Section 527.7(b)(1) of the Sales and Use Tax Regulations, such services constitute the maintaining of real property (see A-Tech Moisture Survey Corp, Adv Op Comm T&F, September 9, 1998, TSB-A-98(65)S; Joseph A. Matocha, Adv Op Comm T&F, March 21, 1990, TSB-A-90(12)S). Section 1105(c)(3) of the Tax Law imposes sales tax on the service of maintaining tangible personal property. Section 527.5 of the Sales and Use Tax Regulations provides that this activity relates to keeping the property in a condition of fitness, efficiency, readiness or safety. While real property is involved in this case, the similarity in the imposition of sales tax upon the services of maintaining real and tangible property is to be noted. The electrical inspection service Petitioner performs is a diagnostic service for keeping the real property in a condition of fitness, efficiency, readiness and safety, as contemplated in Example 6 of Section 527.5(a)(3) of the Sales and Use Tax Regulations with respect to tangible personal property. Therefore, such service is subject to sales tax where it is performed for the owner or lessee of the real property. However, where the purchaser of Petitioner's service is not the owner or lessee of the real property which is the subject of the inspection report, i.e., potential home buyers and real estate agents, the charge paid by the purchaser for the report is not subject to sales tax pursuant to Section 1105(c)(5) of the Tax Law as a charge for maintaining, servicing or repairing real property, property or land (see A-Tech Moisture Survey Corp, *supra*; Joseph A. Matocha, *supra*).

Additionally, inspection services performed solely for purposes of mandatory governmental code compliance, whether performed for the property owner or a third party, 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 and 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; Richard T. Smokowski, Adv Op Comm T&F, March 27, 1997, TSB-A-97(18)S).

Since Petitioner provides taxable electrical inspection services in New York State, Petitioner falls within the definition of vendor as defined in Section 1101(b)(8)(i) of the Tax Law and Section 526.10(a)(1)(ii) of the Sales and Use Tax Regulations. Therefore, Petitioner is a person required to collect the sales tax in accordance with Section 1131 of the Tax Law. Accordingly, Petitioner is required to register under Section 1134 of the Tax Law and to file returns and remit the New York State sales tax required to be collected, as well as local sales tax imposed under the authority of Article 29 of the Tax Law. See Sections 1132 and 1210 of the Tax Law. It is the responsibility of every vendor who sells both taxable and nontaxable services to maintain accurate records indicating such sales. See Section 1135 of the Tax Law which sets forth the record-keeping requirements applicable to vendors for purposes of sales and compensating use taxes. Petitioner's records must

TSB-A-98(82)S
Sales Tax
December 2, 1998

indicate the identity of the services sold, to whom they were sold and the amount of tax due and collected thereon.

DATED: December 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.