

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

TSB-A-98(85)S
Sales Tax
December 11, 1998

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S961219B

On December 19, 1996, the Department of Taxation and Finance received a Petition for Advisory Opinion from Thomas E. Lawrence, 277 Bridle Path Lane, Mill Neck, NY 11765.

The issue raised by Petitioner, Thomas E. Lawrence, is whether the charge by a utility company for installation of a new residential gas service at the Petitioner's house is subject to New York State and local sales and use taxes.

Petitioner submits the following facts as the basis for this Advisory Opinion. Petitioner is a Nassau County residential customer of the local utility and paid sales tax to the utility in connection with the utility's charges for the installation of a new natural gas line at Petitioner's residence. The utility collected sales tax from Petitioner on this installation service at the combined State and local sales tax rate in Nassau County of 8½ percent.

The utility company's contract with Petitioner states, "It is understood and agreed that title to all gas mains and their appurtenances installed under this agreement and to their accompanying easements or rights-of-way shall be and remain with the Company, its successors or assigns, at all times."

The utility company's "Proposal for New Residential Gas Service" states, "Please be advised that all computations are based upon tariffs which are filed with and approved by the Public Service Commission. Any applicable tariff change become [sic] part of this agreement and may affect your bill."

Applicable Law and Regulations

Section 1105 of the Tax Law states in part:

Imposition of sales tax . . . there is hereby imposed and there shall be paid a tax of four percent upon:

* * *

(b) The receipts from every sale, other than for resale, of gas, . . . and gas . . . service of whatever nature, . . .

* * *

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

(3) Installing tangible personal property . . . or maintaining, servicing or repairing tangible personal property . . . except:

* * *

(iii) for installing property which, when installed, will constitute an addition or capital improvement to real property, property or land, as the terms real property, property or land are defined in the real property tax law as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter, . . .

The unnumbered paragraph at the end of 1105(c)(3) relating to the exclusion for capital improvements states:

Provided, however, that nothing contained in this paragraph three shall be construed to exclude from tax under this paragraph or under subdivision (b) of this section any charge, made by a person furnishing service subject to tax under subdivision (b) of this section, for installing property at the premises of a purchaser of such taxable service for use in connection with such service.

Section 527.2(a)(3) of the Sales and Use Tax Regulations provides as follows:

A charge for installing equipment, such as transmission equipment, which a gas, electric, or telephone or telegraph company makes, according to a tariff, to a real property developer is deemed to be a charge for gas, electric, telephone or telegraph service. The charge may be for reimbursement of the company's cost of doing the work itself, or for the cost the company incurred in having a contractor perform the work.

Section 1105-A of the Tax Law provides in part:

Reduced tax rate on certain energy sources and services. (a) Notwithstanding any other provisions of this article, but not for purposes of the taxes imposed by section eleven hundred seven or eleven hundred eight or authorized pursuant to the authority of article twenty-nine of this chapter, the taxes imposed by subdivision (a) or (b) of section eleven hundred five on the receipts from the retail sale of fuel oil and coal used for residential purposes; the receipts from the retail sale of wood used for

residential heating purposes; and the receipts from every sale, other than for resale, of propane (except when sold in containers of less than one hundred pounds), natural gas, electricity, steam and gas, electric and steam services used for residential purposes shall be paid at the rate of . . . zero percent on and after October first, nineteen hundred eighty

In accordance with section 1210(a) and (b) of the Tax Law, counties and cities are authorized to reduce the tax rate imposed on certain energy sources and related services used for residential purposes. Nassau County is one of the localities which reduced its local tax on certain energy sources for residential use to zero percent. However, school districts which impose a tax on utility services pursuant to section 1212 of the Tax Law are not authorized to reduce the tax rate imposed on residential energy sources and related services.

Section 1139 of the Tax Law states in part:

Refunds.-(a) In the manner provided in this section the tax commission shall refund or credit any tax, . . . erroneously, illegally or unconstitutionally collected or paid if application therefor shall be filed with the tax commission (i) in the case of tax paid by the applicant to a person required to collect tax, within three years after the date when the tax was payable by such person to the tax commission . . . (ii) in the case of a tax, . . . paid by the applicant to the tax commission, within three years after the date when such amount was payable under this article,

Opinion

Petitioner's purchase of the service of installing a new residential gas service does not qualify for the capital improvement exclusion under section 1105(c)(3)(iii) of the Tax Law. The unnumbered paragraph at the end of section 1105(c)(3) provides that this exclusion is not applicable under the facts described above, where a utility installs property at a customer's premises for use in connection with utility services. However, the utility company's installation charge is a charge for gas service within the meaning of section 1105(b) of the Tax Law and section 527.2(a)(3) of the Sales and Use Tax Regulations. This charge is eligible for the "zero percent" rate of State and local taxes imposed on gas services used for residential purposes under section 1105-A of the Tax Law and pursuant to the authority of section 1210 of the Tax Law. It should be noted, however, if Petitioner's house is within the boundaries of either the Glen Cove or Long Beach School Districts,

TSB-A-98(85)S
Sales Tax
December 11, 1998

a 3 percent tax would be applicable to such installation charges. Therefore, there is no sales tax on the transaction (other than the school district tax, if applicable).

DATED: December 11, 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.