

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

TSB-H-81 (104) S
Sales Tax
May 25, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S801119A

On November 19, 1980 a Petition for Advisory Opinion was received from Chapin & Fagin Division, GCF Inc., 105 Dorothy Street, Box 246, Buffalo, New York 14240.

The issue raised is whether payments from certain subsidiaries to Petitioner (their parent corporation) for maintenance work performed by employees carried on Petitioner's central payroll account constitute receipts from the sale of services taxable under Article 28 of the Tax Law.

Maintenance employees on Petitioner's payroll perform maintenance functions for both Petitioner and Petitioner's subsidiaries. Petitioner and its subsidiaries share common facilities in Buffalo, New York. Each maintenance employee maintains a time sheet upon which he sets forth his hours and for whom those hours were expended. At the end of each payroll period the amount of the maintenance payroll is broken down to reflect the charges properly allocated to each company. At the end of each month an inter-company invoice is prepared which sets forth all the maintenance information, i.e., labor, rates, etc. to be allocated to each company. Petitioner is reimbursed for amounts allocable to each subsidiary.

Section 1105 of the Tax Law imposes a tax on the receipts from the service of "(c)...Installing tangible personal property or maintaining, servicing or repairing tangible personal property not held for sale in the regular course of business....(5) Maintaining, servicing or repairing real property, property or land...."

Inasmuch as the maintenance employees are paid from Petitioner's payroll, they are considered to be Petitioner's employees and not employees of Petitioner's subsidiaries. Accordingly, Petitioner's charges to its subsidiaries for work performed by Petitioner's maintenance employees are subject to state and local sales taxes pursuant to the provisions of Section 1105(c) (3) and/or Section 1105(c) (5) of the Tax Law.

DATED: May 6, 1981

s/ LOUIS ETLINGER
Deputy Director
Technical Services Bureau