

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

TSB-H-81 (86) S  
Sales Tax  
April 23, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S801024A

On October 24, 1980, a Petition for Advisory Opinion was received from the City of Rome, City Hall, Liberty Plaza, Rome, New York 13440.

The issue raised is whether or not receipts from dumpster service provided by the City of Rome is subject to the sales tax imposed under Articles 28 and 29 of the Tax Law.

The City of Rome provides Dempster Dumpster units for use in providing garbage collection service, on a contractual basis, to persons located in the City. There is no charge for trash removal where the City does not furnish a Dempster Dumpster. The City does not rent dumpsters to residents without providing pick-up service.

Section 1105(a) of the Tax Law imposes a tax on "The receipts from every retail sale of tangible personal property...."

Section 1101 (b) (5) of the Tax Law defines the term sale to mean "Any transfer of title or possession or both, exchange or barter, rental, lease...for a consideration...."

Section 1116(a) (1) of the Tax Law exempts from the tax imposed under section 1105(a) "The state of New York, or any of its...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."

Section 1116(e) of the Tax Law provides as follows:

"(e) Receipts from the service of trash removal shall be exempt from the tax on such service imposed by this article, [under section 1105(c) (5) of the Tax Law] where such service is rendered by a municipal corporation of the state, other than a city of one million or more, including such service rendered on its behalf, under an agreement with such corporation."

Since the City does not charge for the service of garbage removal, except when it provides a Dempster Dumpster, it is clear that the charge made constitutes a charge for rental of the dumpster. Such charges are subject to tax under section 1105(a) of the Tax Law.

The exemption provision contained in section 1116(e) of the Tax Law is not applicable because the receipts in question are derived from the rental of tangible personal property and not the service of trash removal. The exemption provision contained in section 1116(a) (1) of the Tax Law is not applicable because the property rented is "of a kind...ordinarily sold by private persons."

DATED: April 8, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau

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JAMES H. TULLY, JR., COMMISSIONER    LOUIS M. JACOBSON, DEPUTY COMMISSIONER  
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