

**New York State Department of Taxation and Finance**  
**Office of Counsel**  
**Advisory Opinion Unit**

TSB-A-09(51)S  
Sales Tax  
November 12, 2009

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S090504A

On May 4, 2009, the Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether any of its waste management services are subject to sales and use tax. None of the services it provides that are enumerated in its application for an advisory opinion are subject to sales tax.

**Facts**

Petitioner provides waste management consulting services to clients engaged in business activities. Petitioner advises its clients as to the proper, most efficient, most economical and most ecologically appropriate means of managing their waste. Petitioner does not perform any waste removal services itself. Petitioner acts as the representative of its clients in their relationship with waste haulers and other service providers. It enters agreements with waste removal companies that specifically state that Petitioner acts as agent for its client. These agreements are legally binding on Petitioner's client. The waste removal company invoices Petitioner as agent of its client for services rendered at the client's locations. This invoice includes any applicable taxes. Petitioner bills its client on a monthly basis for the services rendered by waste removal companies, i.e., Petitioner's invoice lists the amounts due various waste removal companies. Petitioner's invoice also includes a fee for the management services Petitioner provides. The client remits a check to Petitioner in payment of the invoice, which Petitioner deposits in a bank account established for the sole purpose of holding clients' funds in trust pending payments to contractors. Petitioner pays contractors directly from this account. Each client's funds are separately accounted for on Petitioner's books: each client's account is debited or credited as payments are made or received on behalf of the client. In sum, Petitioner will pass through to a client without markup the fees charged by waste removal companies that have a contractual relationship with the client through a written agreement signed by Petitioner as agent of the client.

**Analysis**

The application of sales tax to Petitioner's receipts depends on whether Petitioner acts in a representative capacity as agent for the waste generator, its client. To establish an agency relationship there must be a "manifestation" that Petitioner consents to act on behalf of the client, subject to its control, and that the client authorizes the fiduciary relationship. (*See, Matter of Hooper Holmes v Wetzler*, 152 AD2d 871, *lv den*, 75 NY2d 706; *Matter of Swet*, Dec Tax App Trib, February 22, 1991, TSB-D-91(10)S.) Based on the facts in this Opinion, Petitioner is acting as agent on behalf of its clients in regard to the purchase of waste disposal services. It has agreements with its clients to act as purchase agent, it identifies itself as agent for its clients in its contracts with the waste disposal companies, these companies bill Petitioner as agent, Petitioner pays these bills from funds obtained from its clients, and Petitioner does not mark up the charges billed by the waste disposal companies. Since Petitioner acts as agent, it is not reselling the services provided by the waste disposal companies. *Waste Technology Services, Inc.*, Adv Op Comm T & F, March 3, 1998, TSB-A-98(15)S. The waste management consulting services provided by Petitioner are not enumerated taxable services under Tax Law §1105(c). Accordingly, Petitioner's management fee is a receipt for a

service that is not subject to sales tax. In sum, Petitioner does not sell waste removal services or other taxable services; therefore, it is not required to collect New York State sales tax from its clients.

The analysis in this Opinion presumes that Petitioner has no affiliation with the waste disposal companies providing services to Petitioner's clients. If Petitioner has an affiliation with waste disposal companies, the conclusion reached in this Opinion would not necessarily apply.

DATED: November 12, 2009

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Jonathan Pessen  
Director of Advisory Opinions  
Office of Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.