

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

TSB-A-10(18)S
Sales Tax
April 27, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S100125A

Petitioner [REDACTED] asks whether the optional amounts it pays to its leasing company for rental protection from theft of and damage to the leased tangible personal property are subject to sales tax.

We conclude that the amounts Petitioner optionally pays its lessor for theft and damage waiver protection of leased tangible personal property are not receipts from the sale of tangible personal property or services subject to tax pursuant to the provisions of section 1105 of the Tax Law.

Facts

In conjunction with its rental of equipment, Petitioner purchased rental protection from the equipment's lessor. The rental protection plan was a waiver by the lessor limiting the amounts that could be collected from Petitioner for replacement or repairs to the equipment arising out of theft of or direct physical damage to the leased equipment. Charges for the rental protection were separately stated and the purchase of the protection plan was optional (i.e., Petitioner could choose not to participate in the plan). The rental protection plan was not provided by or through an insurance carrier and the lessor's rental protection plan addendum to the rental agreement contract specifically informs that the rental protection plan is not insurance.

Analysis

Pursuant to section 1105 of the Tax Law, the sales tax is imposed on all sales other than for resale of tangible personal property and certain enumerated services.

Fees paid for the purchase of insurance contracts are not subject to tax. The reimbursement of a lessor's or service provider's insurance expenses as an added cost of the rental of equipment (and other tangible personal property) or as an added cost of the purchase of services is a part of the receipt for such rental/services and will be considered included in the receipt subject to tax, regardless of whether those expenses are separately stated on the bill or invoice, if the rental/service is otherwise taxable. Adv Op Comm Tx & Fin December 7, 2009, TSB-A-09(56)S).

In the present case, the optional charge for the rental protection plan providing a waiver and limitation on damages for theft and equipment damage, though similar in substance to insurance, is not paid by customers under an insurance policy with a licensed insurance carrier, and in fact is not insurance. This rental protection plan providing a waiver and limitation on damages in respect of the theft or damage to the equipment is not a warranty or service plan providing for taxable maintenance and repair services. Similarly, the charge to the customer for the rental protection plan is not an expense of the equipment lessor being passed through in the cost of the lease to Petitioner. The charge for the rental protection plan is not a charge for the purchase of tangible personal property and is not a charge for any of the enumerated services subject to tax pursuant to section 1105 of the Tax Law, and therefore is not subject to State and local sales and use taxes. Provided the charges for the property protection plan are separately stated when billed to the customer, there is no sales tax due on these charges. *See Alamo Rent A Car, Inc.*, Adv Op Comm T&F,

April 15, 1991, TSB-A-91(33)S; *Pro Net, Inc.*, Adv Op Comm T&F, October 2, 1991, TSB-A-91(65)S; *ELRAC, Inc.* Adv Op Comm T&F, June 12, 2003, TSB-A-03(26)S; and *SAM (Store and Move), LLC*, Adv Op Comm T&F, November 19, 2008, TSB-A-08(64)S.

DATED: April 27, 2010

/S/

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.