

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

TSB-A-11(2)S  
Sales Tax  
December 28, 2010

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S101007A

On October 7, 2010, the Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether charges for sewer and water service as described below are taxable. We conclude that the sewage service is subject to sales tax, but that the water service is exempt.

**Facts**

Petitioner provides management, administrative, and billing services for two New York State utility companies. One is a water-works corporation formed pursuant to the New York State Transportation Corporations Law (“Water Works Company”). The other is a sewage-works corporation formed pursuant to the New York State Transportation Corporations Law (“Sewer Works Company”). Currently the Water Works Company provides water services, through pipes and mains, to 18 customers at a commercial shopping center located in Putnam County, New York. The Sewer Works Company provides sewer service to these same customers. These services are provided through the operation of stand-alone water and sewer utility plants owned and operated by Water Works Company and Sewer Works Company, respectively. The cost of providing water and sewer service includes the maintenance and operation of the water and sewer plants and these costs and expenses are incorporated into the rates paid by the customers for water and sewer service.

Since 2003, the bills for the two companies have included sales tax.

**Analysis**

The Tax Law imposes sales and use tax on, among other things, the sale of tangible personal property and certain enumerated services (*see* Tax Law § 1105[a], [c]). Water is exempt from sales and use tax when delivered through pipes or mains to the customer (*see* Tax Law § 1115[a][2]). Accordingly, Water Works Company’s sale of water through pipes or mains is exempt. To obtain refunds, Water Works Company’s customers must file refund claims within three years of the date when the tax was payable by the Company to the Department of Taxation and Finance (*see* Tax Law §1139[a]).

Among the enumerated services subject to tax is the servicing, repair or maintenance of real property (*see* Tax Law § 1105[c][5]). Under the Sales Tax Regulations, a sewage service represents the maintenance of real property and is taxable (*see* 20 NYCRR § 527.7[a][1]).

DATED: December 28, 2010

/S/  
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DANIEL SMIRLOCK  
Deputy Commissioner and 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.