

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

TSB-A-12(19)S
Sales Tax
August 27, 2012

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S090901A

Petitioner, [REDACTED] requests an Advisory Opinion about whether charges to its customers for the services comprising its vehicle Maintenance Management Program are subject to State and local sales and use tax.

We conclude that Petitioner's monthly per-vehicle fee and occurrence fees related to the Service Savings, Preventive Maintenance and Warranty Recovery components of Petitioner's Maintenance Management Program are not subject to the sales and use tax. Similarly, a separately stated [REDACTED] (X)% administrative charge related to Petitioner's additional costs in tracking customer data in certain instances and any separate charges for roadside assistance service managed and billed for by the Petitioner are not subject to tax. When making payment, Petitioner pays tax to the service providers providing any item or service subject to tax.

Facts

Petitioner is engaged in its own sizable fleet vehicle leasing business. Petitioner uses the expertise it has acquired in its own business to offer a wide array of services to customers who own or operate their own vehicle fleets. Petitioner provides these services to customers that lease vehicles from Petitioner, but there is no requirement to lease a vehicle from Petitioner in order to purchase any of Petitioner's services. Through these services, Petitioner assists the customer with almost any aspect of vehicle fleet maintenance. Petitioner describes this program as relieving the customer of the daily task of administering its fleet by the Petitioner acting as the "liaison" between the service providers and its customers' drivers. Petitioner groups four of its services into its Maintenance Management Program. These services include: (1) Service Saving Program; (2) Preventive Maintenance Program, (3) Warranty Recovery Program, (4) 24-Hour Roadside Assistance Program.

These aspects of the Maintenance Management Program are described as:

- **Service Saving Program.** Under this program, Petitioner negotiates agreements with unrelated third party providers of vehicle services, so that all its customers receive discounts on their purchases of products such as tires, batteries, repair services, and glass replacement. Services are provided at recognized nationwide third-party tire and service outlets. Services may be obtained using a service card that is issued to a customer's driver, which evidences participation in this program, or by the third-party provider contacting the Petitioner for authorization and a purchase order. The customer must notify Petitioner of any limitations it wants to place on a driver's ability to request certain repairs or a dollar limitation, so that these limitations may be included on the service cards.

- **Preventive Maintenance Program.** Like the Service Saving Program, Petitioner negotiates contracts on behalf of all its customers with national automotive maintenance companies (e.g., oil change providers). Petitioner negotiates a fixed discounted price for which the maintenance company agrees to provide services to all of Petitioner's customers. Petitioner may also negotiate similar agreements with local automotive maintenance providers on behalf of specific customers that have vehicles in areas not serviced by the national companies. Petitioner also acts as liaison between the service providers and the customers' drivers. This program also includes the provision of reports, which enable customers to monitor and verify that necessary vehicle maintenance is performed on time.
- **Warranty Recovery Program.** Petitioner also acts as liaison between vehicle manufacturers, the customers' fleet managers, and repair shops. If a vehicle needs a repair, Petitioner's technicians will see if the repair is covered under a vehicle or component warranty. If necessary, Petitioner may act on its customer's behalf to advocate for a manufacturer or repair shop to cover repair work outside the normal warranty service.
- **24-Hour Roadside Assistance Program.** Petitioner also provides a 24-hour toll-free roadside assistance phone line, to arrange for towing of a covered vehicle suffering from some form of mechanical distress. Customers participating in this program are billed and pay on a per-occurrence basis. Petitioner is billed by third party contractors for the services (towing, repairs, etc.) provided to its customers. Petitioner, in turn, bills its customer for the costs of the services provided, plus its per-occurrence fee. In addition, Petitioner's technician will help customers avoid a provider outside its service network from over-billing for emergency repairs.

As part of providing these four services, Petitioner provides its customers these additional benefits:

- **Individual driver handbooks on standard vehicle operating guidelines.** These handbooks are provided to the customer's drivers and provide basic advice about the operation of the vehicle used by the driver. Each vehicle is issued a packet, which contains information such as the customer ID, vehicle number, maintenance intervals, a list of the approved national automotive maintenance companies, and other pertinent information. In addition, Petitioner's toll-free telephone number is included.
- **Control and approval of all servicing requirements by Petitioner's technicians.** Petitioner's in-house service technicians answer customer phone calls and advise about the necessity of maintenance or repairs suggested by a service provider other than those pre-approved by Petitioner. The driver of the covered vehicle will call Petitioner's technicians, who will verify the customer's service/repair policy and review the vehicle history. Petitioner's technician will analyze the current vehicle issues as described by the driver and will direct the driver to an approved repair facility. If possible, the technician will arrange an appointment with the repair facility. If the vehicle is brought into an approved repair facility by the customer's employee without contacting Petitioner's technician, the repair facility will contact Petitioner for authorization of the repair. As with the 24-hour roadside

assistance, the cost of suggested repairs or maintenance services is evaluated by Petitioner's technicians to prevent over-billing. Petitioner's technicians do not, however, diagnose problems called in by customers.

- Maintenance of individual vehicle daily operating records. Petitioner maintains individual vehicle daily operating records and Petitioner's technicians monitor all servicing requirements. Purchase orders, service cards, and coupon books are used by the customer in securing the services of unrelated third party service providers. The coupon books, service cards, and purchase orders are marked in such a way as to allow Petitioner to track a vehicle's maintenance and repairs as services are performed. This enables the Petitioner to bill for the services provided, and to inform customers about maintenance performed and maintenance that is due (e.g., it has been 2 months since last oil change). In addition to documenting when required maintenance or repairs were performed, Petitioner provides customers access to this information through its website. In this way, the Petitioner may provide the most current information possible, and the customer can view certain information about its vehicle fleet, including the status of vehicle maintenance. The website enables a customer to print out a report of fleet maintenance information. Petitioner also provides its customers with comprehensive customized reports that identify cost improvement areas.
- Direct communication between Petitioner's technicians and its customers' drivers using a national toll free number.

Pursuant to contracts with Petitioner, both the national and local third-party service contractors and maintenance providers bill Petitioner monthly for services provided to Petitioner's customers. Petitioner aggregates the bills of each service contractor for each customer, and the customer receives a single monthly bill from Petitioner for all services rendered to all the customer's vehicles. For example, Petitioner separately bills Customer A for the oil changes, new tires purchased, etc., for Customer A's vehicles; and separately bills Customer B for the oil changes, new tires purchased, etc., for Customer B's vehicles. Petitioner adds a separately-stated X% charge to the charges for property or services purchased from local service contractors to account for its additional administrative costs in tracking the customer's data when they use the local contractor. Petitioner does not mark-up the charges for the property and services provided by the national service contractors.

Petitioner also charges customers a fixed monthly fee per-vehicle for administering the customer's maintenance program. Petitioner's fee for administering the maintenance program is based on the number of vehicles covered by the program, not on the cost of services purchased. The customer pays this monthly fee regardless of the number of actual services performed. The charges for the actual services performed on a customer's vehicles are stated separately from the monthly per-vehicle fee. Petitioner will reduce its per-vehicle fee if a customer operates its own repair and maintenance facilities, and only purchases Petitioner's service of identifying cost improvement areas.

The third-party service contractors collect sales taxes from Petitioner on all taxable maintenance or repair purchases. These taxes are then passed through to the customer, along with the charges for parts, services and the X% charge for its administrative costs, if applicable. Petitioner invoices customers once a month for the services performed that month by all third-party service contractors. Customers that operate their own repair facilities have access to Petitioner's database and their maintenance and repair data.

As part of its Petition for Advisory Opinion, Petitioner provided samples of its customer contracts (i.e., Fleet Management Services Agreement) and its third-party vendor contracts. Under the terms of its customer agreements, Petitioner states that when it purchases property or repair or maintenance services, Petitioner acts only as the customer's purchasing agent. The contract characterizes Petitioner's service as an administrative billing and processing service. The agreements also provide that Petitioner makes no express or implied warranty as to the condition of any goods and services furnished by the third-party contractors, or the merchantability or fitness for any purpose of such goods and services. The language of Petitioner's contracts with its customers disclaims any responsibility for any damages that may occur as a result of the maintenance services provided by the unrelated third parties. Neither Petitioner nor any entity related to Petitioner owns or operates a vehicle repair or maintenance facility used by its vehicle Maintenance Management Program customers.

Analysis

The charges for Petitioner's Maintenance Management Program (i.e., the Service Saving Program, Preventive Maintenance Program, and Warranty Recovery Program) are not subject to tax. Section 1105(c)(3) of the Tax Law imposes tax on the receipts from the services of installing, maintaining, servicing, and repairing tangible personal property. However, in this instance, Petitioner does not actually own or operate any repair or maintenance facility. Petitioner's Maintenance Management Program consists of an assortment of services where it provides its own specialized skills and experience to provide management and oversight to reduce its customers' costs. Petitioner's technicians recommend whether or not a maintenance or repair service is necessary or reasonably priced. Petitioner's service provides for the daily administration of the maintenance and repair needs of its customers' vehicle fleets. It augments this service by offering aspects of what appears to be a consulting service (e.g., advising a customer that a certain repair is not necessary).

However, Petitioner's technicians do not attempt to diagnose problems called in by customers. Petitioner's charges in relation to its management and consulting services are charges for unenumerated services that are not subject to tax under section 1105 of the Tax Law. *See* TSB-A-09(51)S. In providing its Maintenance Management Program, Petitioner collects, compiles, and maintains vehicle and fleet maintenance records for individual customers. Petitioner provides a customer access to this information for the customer's own fleet, and it generates reports using this information that identify cost improvement areas. Petitioner adds a separately-stated X% charge to the charges for property or services purchased from local service contractors to account for its additional administrative costs in tracking the customer's data when they use the local contractor. However, Petitioner does not augment this information with information taken from any public

source or other customers and it does not sell information pertaining to any particular customer's vehicles to any other party. This information is relevant only to a particular customer's vehicle fleet. Consequently access to this information and the reports generated using this information do not constitute a taxable information service under section 1105(c)(1) of the Tax Law, because it qualifies for the exclusion from sales tax for information services that are personal and individual in nature.

Charges paid by the Petitioner for the purchase of tangible personal property are subject to the sales tax imposed under section 1105(a) of the Tax Law on retail sales of tangible personal property. Section 1105(c)(3) of the Tax Law imposes tax on sales of the service of installing, maintaining, servicing, and repairing tangible personal property. When making payment, Petitioner pays tax to the service providers providing any item or service subject to tax. This would include charges to have a disabled or damaged vehicle towed to a repair shop. This service constitutes a maintenance service for purposes of section 1105(c)(3) of the Tax Law. See 20 NYCRR 527.5(a)(3); TSB-A-09(50)S; TSB-A-10(25)S. However, Petitioner's charges for reimbursement and for its management and billing services are not subject to tax.

The handbooks transferred to the customer's drivers as part of the Maintenance Management Program are incidental in nature, and are provided only in conjunction with the management services provided by Petitioner. Accordingly, they are not subject to sales tax when provided to the customer. See *Matter of Atlas Linen Supply Company v. Chu* 149 AD2d 824 (3d Dep't 1989). Petitioner must pay tax on its purchase of the handbooks and it cannot claim the resale exemption at the time the handbooks are purchased.

DATED: August 27, 2012

/S/

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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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.