

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-17(14)S
Sales Tax
August 2, 2017

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S141209C

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether receipts from the inspections of cross-control or backflow prevention devices used in the installation of plumbing fixtures are subject to New York state and local sales taxes.

We conclude that Petitioner’s receipts from government-mandated inspections of cross-control devices are not subject to New York State and local sales taxes.

Facts

Petitioner operates a business that inspects cross-control or backflow prevention devices (“cross-control devices”) used in the installation of plumbing fixtures for the supply of drinking water. Hydraulic events, such as a broken water main, severe or widespread power outages and/or firefighters using large quantities of water, may result in the backflow of contaminated water into the water distribution system. When properly installed, cross-control devices prevent contaminants from entering a water distribution system when the water pressure is greater than or less than the pressure in the water distribution system. For plumbing fixtures where excess or negative water pressure could result in the backflow of contaminants in the water distribution system, the Bureau of Water Supply Protection of the New York State Department of Health (“DOH”) requires the installation and annual testing of a cross-control device in compliance with the requirements of Department of Health regulations 10 NYCRR 5-1.31.

Analysis

A diagnostic service that tests the function of a piece of equipment is generally considered a taxable maintenance service, even if no repair is performed. *See* 20 NYCRR 527.5(a)(3), Example 6. However, inspections that are government-mandated for code compliance are not subject to New York State and local sales taxes. *See* TSB-A-05(11)S; TSB-A-96(67)S; *cf* Publication 838, *A Guide to Sales Tax for Automobile Dealers* (stating that the service of performing required New York safety and emission inspections is not subject to sales tax). If Petitioner is inspecting a cross-control device, as required by 10 NYCRR 5-1.31, charges

for the inspection are not subject to New York State and local sales taxes. However, inspections that are not government-mandated, but rather are performed at the request of a customer or third party (even if performed in anticipation of a government-mandated inspection), are subject to New York State and local sales taxes. *See* Tax Law § 1105(c)(3) and (5).

DATED: August 2, 2017

/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.