

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-A-85(63)S  
Sales Tax  
December 4, 1985

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S850212B

On February 12, 1985, a Petition for Advisory Opinion was received from Robert M. Markham, P.C., 638 Meadow Court, Westbury, New York 11590.

The issue raised is whether charges made by the landlord to the tenant for heated and chilled water, normally used by the tenant in heating and cooling the premises, are subject to sales tax.

Petitioner intends to rent real property located within the City of New York. The landlord will charge Petitioner (tenant) rent for the premises. In addition to this basic rent, the landlord will invoice the Petitioner for heated and chilled water. The charge is based upon the greater of the square footage occupied or the gross tonnage of the heating/cooling equipment installed. The water system is closed and no water is removed from the system.

Section 1105(b) of the Tax Law imposes a tax on the receipts from every sale, except for resale, "of gas electricity, refrigeration and steam and gas, electric, refrigeration and steam service of whatever nature. . . ."

The landlord for all practical purposes is charging the tenant for heat and air conditioning, not for the water that is being heated and chilled. This heated and chilled water is of no use to the tenant until it is acted upon to produce heat and air conditioning.

"Where separate charges are made for heating, air conditioning and elevator service, in addition to rent, whether on regular time or overtime, there would be a tax on the heating and air conditioning charges under section 1105(b) of the Tax Law which imposes a tax on steam and refrigeration service." New York State Tax Bulletin, Department of Taxation and Finance No. 1966-3.

Accordingly, the charge for heated and chilled water used to heat and cool Petitioner's premises is taxable as refrigeration and steam service under Section 1105(b) of the Tax Law.

DATED: November 18, 1985

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions  
are limited to the facts set forth herein.