

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

TSB-A-86(36)S
Sales Tax
September 10, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S860612A

On June 12, 1986 a Petition for Advisory Opinion was received from the City of Long Beach, Kennedy Plaza, Long Beach, New York 11561.

The issue raised is whether "user charges" billed by the City of Long Beach for sewage treatment services are subject to the sales and use taxes imposed under Articles 28 and 29 of the Tax Law.

The City of Long Beach is a municipal corporation which, at the present time, owns and maintains a Wastewater Treatment Plant. The City is going to have constructed at the site of the existing plant, a new sewage treatment plant. The new plant will be constructed, owned and maintained by a private enterprise. The existing facility and lands will be leased by the City to such private enterprise firm.

Upon completion of such new sewage treatment plant, the private enterprise firm will own, operate and maintain the same under a long term contract with the City of Long Beach. The City will retain the right to buy out the private enterprise firm's interest in the new sewage treatment plant.

The private enterprise firm, pursuant to the contract, will bill the City, either monthly, yearly, etc., for wastewater treatment services. The City will then bill individual users (both residential and commercial) a user charge. In summary, the City will continue to be the provider of the services to the public while procuring the treatment services from the private sector rather than directly treating the sewage.

Section 1116(a)(1) of the Tax Law provides that any sales by the State of New York or any of its agencies, instrumentalities, public corporations or political subdivisions shall not be subject to the sales and compensating use tax where it is the purchaser, user or consumer or where it is a vendor of services or property of a kind not ordinarily sold by private persons.

Petitioner is an instrumentality of the State of New York, and as such is not liable for the collection of sales tax on the sale of any service which is not ordinarily offered for sale by private persons.

While waste treatment services may sometimes be sold by private persons, they are not ordinarily sold by private persons within the meaning and intent of section 1116(a)(1) of the Tax Law. See: Village of East Aurora, State Tax Commission Advisory Opinion, June 10, 1985,

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TSB-A-85(26)S. Accordingly, Petitioner is not required to collect sales tax on its charge to property owners for sewer rent. The fact that petitioner initially purchases waste treatment services from a private company does not alter its exempt status.

DATED: September 10, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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