

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

TSB-A-89 (18)S  
Sales Tax  
July 17, 1989

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S881209A

On December 9, 1988, a Petition for Advisory Opinion was received from Michael J. Berger and Co., CPA's, 1401 Church Street, Bohemia, New York 11716.

The issue raised is the taxability, under Articles 28 and 29 of the Tax Law, of the services of baling garbage and arranging for its shipment out of state by contract truckers.

A client of Petitioner is contemplating going into business whereby it will receive garbage from local carting companies, bale the garbage and then ship it out of state by means of contract truckers. The client will charge a fee to the local carting companies on a per ton basis. The client will then pay the contract truckers on a per ton basis to transport and dispose of the garbage out of state. Petitioner has not indicated that any of the garbage consists of materials which will be recycled.

Section 1105(c)(5) of the Tax Law imposes a tax upon the services of maintaining, servicing or repairing real property. Regulation section 527.7(a) provides that the services of trash and garbage removal are included within the phrase "maintaining, servicing or repairing real property" and are subject to tax under section 1105(c)(5). Should Petitioner's client arrange with a property owner or occupant for the hauling of garbage from such person's premises, the charges for such services would be subject to tax. Cecos International, Inc. v State Tax Commission, 71 NY2d 934 (1988). However, the services of arranging for the transportation and disposal without further treatment of trash and garbage, after its removal from real property by a trash hauler, would not itself constitute maintaining servicing or repairing real property and would not be subject to tax under section 1105(c)(5).

Section 1105(c)(2) of the Tax Law imposes a tax upon the services of [p]roducing, fabricating, processing, printing or imprinting tangible personal property performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale, upon which such services are performed.

"When treatment [of waste] is required, a sales tax can be imposed pursuant to Tax Law § 1105(c)(2), which allows a tax upon the receipts from the sale of the service of "processing \* \* \* tangible personal property, performed for a person who directly or indirectly furnishes the tangible personal property \* \* \* upon which services are performed" (Tax Law § 1105[c][2])". Cecos, 71 NY2d at 937.

There is no requirement in section 1105(c)(2) that the property be returned to its owner after processing. "Neither the text of the statute nor the language of the regulation, however, so limits the definition of "processing." Inasmuch as petitioner treated the waste and the cost of treating it was

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passed on to the customer, "processing for the owner" resulted and the transaction was subject to taxation whether the property was returned to the customer or not." Cecos, 71 NY2d at 937.

Thus, the service of baling waste to make it suitable for transportation and disposal qualifies as the processing of such waste within the meaning of section 1105(c)(2) of the Tax Law. When Petitioner's client performs such services, the client is performing a service taxable under section 1105(c)(2) of the Tax Law. Therefore, Petitioner's client is required to charge and collect sales tax on its per ton fee for baling and transporting trash and garbage to the out of state disposal dump.

DATED: July 17, 1989

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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