

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

TSB-A-89 (32)S
Sales Tax
August 29, 1989

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S881101B

On November 1, 1988, a Petition for Advisory Opinion was received from Lawrence R. Schillinger, 15 Elk Street, Albany, New York 12207.

The issue raised is whether the service of collecting certain trash material is subject to sales tax under §1105(c)(5) of the Tax Law and whether a credit issued by a solid waste hauler to its customer to induce the customer to separate recyclable materials is considered to be a sale for resale and thus not subject to tax.

A solid waste hauler is considering offering an incentive to its customers whereby the customer will receive a reduction in its bill in exchange for separating its trash into recyclable and non-recyclable components. The solid waste hauler will subsequently prepare the material for market. The types of material which will be collected and marketed include plastic, wood, corrugated cardboard, paper, glass and metals.

Section 1105(c)(5) of the Tax Law imposes a tax upon the service of maintaining, servicing and repairing real property, which includes the service of trash removal.

Under the circumstances described herein, the solid waste hauler is not purchasing tangible personal property for resale. Rather, it is selling a taxable service to real property, the service of trash removal. The waste hauler is free to charge different fees to different customers depending on the nature and condition of the waste to be removed. However, the existence of different fees does not change the nature of the service performed by the waste hauler and does not change the nature of the fee received for such services.

Accordingly, the entire amount charged by the waste hauler for waste removal remains subject to tax under section 1105(c)(5) of the Tax Law.

DATED: August 29, 1989

s/FRANK J. PUCCIA
Director
Technical Services

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