

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

TSB-A-92(58) S
Sales Tax
July 30, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920511B

On May 11, 1992, a Petition for Advisory Opinion was received from Network Service Management, Inc., Endicott Street, Building 32 Norwood, MA 02062.

The issue raised by Petitioner, Network Service Management, Inc., is whether the fees charged by it for managing the accounts of contractors are subject to New York State and local sales and use taxes.

Petitioner contracts with local contractors in several states to perform repair and maintenance services for national retail stores. Under the terms of contract, when Petitioner is notified by a customer that repairs and maintenance is needed at one of its retail outlets, Petitioner contacts a contractor to perform the work. Many of the retail outlets are in New York State.

When Petitioner advises a contractor that certain work must be performed, Petitioner is quoted the charge for such particular service, which includes sales tax. Petitioner contacts the customer and quotes a charge for the service which is "marked up" to compensate Petitioner for providing the customer with a contractor.

Billing for the work performed by the contractor, including sales tax, is billed directly to Petitioner. This bill is paid by Petitioner. Petitioner issues its own bill to the customer for the "marked up" amount, which includes Petitioner's fee for providing the contractor. No sales tax is collected by Petitioner on the charges to the customer for the repair and maintenance services provided. Petitioner is not a registered vendor in New York State.

Section 1105 of the Tax Law states, in part:

Imposition of sales tax. - - ... there is hereby imposed and there shall be paid a tax ... upon:

* * *

(c) The receipts from every sale, except for resale of the following services:

* * *

(5) Maintaining, servicing, or repairing real property, property or land, as such terms are defined in the real property tax law, whether the services are performed in or outside of a building, as distinguished from adding to or improving such real property, property or land, by a capital improvement as such term capital

improvement is as distinguished from adding to or improving such real property, property or land, by a capital improvement as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter, but excluding services rendered by an individual who is not in a regular trade or business offering his services to the public.

Section 541.5 of the Sales and Use Tax Regulations provides, in part, as follows:

(d) Maintaining, installing, repairing, and servicing tangible personal property and real property. - - (1) Tangible Personal Property. (i) Charges for repair, service, maintenance, and installation of tangible personal property which retains its identity as tangible personal property are taxable to the customer based on the full invoice price.

* * *

(iii) A subcontractor must collect tax on all his charges to a prime contractor for repair, service, maintenance, and installation of tangible personal property unless the prime contractor issues a properly completed exemption certificate or a capital improvement certificate to the subcontractor.

* * *

(2) Real Property. Charges for repair, service, and maintenance to real property are taxable, charges for the services of window cleaning, rodent and pest control, and trash removal from buildings are also subject to tax. (emphasis added)

The services provided by Petitioner are consistent with those of a prime contractor, since Petitioner contracts with its customer to perform certain repair or maintenance service at an agreed upon price and subcontracts with a contractor for the performance of such repair and maintenance service. This is further evidenced by the fact that Petitioner is billed by the subcontractor for work performed and, in turn, Petitioner bills the customer for the work performed, "marked up" to include a fee for providing the subcontractor.

Pursuant to Section 1105(c)(5) of the Tax Law and Section 541.5 of the Sales and Use Tax Regulations Petitioner's charges for maintaining, installing, repairing, and servicing tangible personal property and real property are subject to sales tax based on the full invoice price billed to the customer. In addition, the subcontractor must collect tax on all its charges to Petitioner for the repair and maintenance services performed unless Petitioner issues a properly completed exemption certificate to the subcontractor.

TSB-A-92(58) S
Sales Tax
July 30, 1992

It is noted that Petitioner is not registered as a vendor in New York State. Therefore, since Petitioner is providing taxable services in New York State it must register as a vendor. As a registered vendor, Petitioner may then issue exemption certificates to its subcontractor.

DATED: July 30, 1992

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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