

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

TSB-A-99(43)S  
Sales Tax  
November 4, 1999

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S990803A

On August 3, 1999, the Department of Taxation and Finance received a Petition for Advisory Opinion from Daniel A. Short, RR4, E. Genesee St. Rd., Auburn, NY 13021.

The issues raised by Petitioner, Daniel A. Short, are:

1. Whether parts purchased by Petitioner to repair and refurbish farm mixers are subject to State and local sales and compensating use taxes.
2. Whether the services performed by Petitioner are subject to State and local sales and compensating use taxes.
3. Whether Petitioner must register with the Department of Taxation and Finance under Article 28 of the Tax Law.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner has contracted with a customer to repair and refurbish farm mixers. The customer has received these mixers as trade-ins, has them repaired and refurbished by Petitioner, and sells them as equipment to farmers. These mixers are used solely on farms to mix feed for cows. Petitioner does not conduct any other business.

**Applicable Laws and Regulations**

Section 1101(b) of the Tax Law provides, in part:

(b) When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

\* \* \*

(4) Retail sale. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3), (5), (7) and (8) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the

property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax....

Section 1105 of the Tax Law provides, in part:

On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

\* \* \*

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

\* \* \*

(3) Installing tangible personal property . . . or maintaining, servicing or repairing tangible personal property . . . not held for sale in the regular course of business... except:

\* \* \*

(vi) such services rendered on or after September first, nineteen hundred eighty-two with respect to tangible personal property for use or consumption directly and predominantly in the production for sale of tangible personal property by farming, as such tangible personal property is specified in paragraph six of subdivision (a) of section eleven hundred fifteen of this article. The exemption provided by this subparagraph (vi) shall not apply to the taxes imposed pursuant to section eleven hundred seven of this article.

Section 1134(a)(1) of the Tax Law provides, in part:

(i) Every person required to collect any tax imposed by this article ... (ii) every person purchasing or selling tangible personal property for resale commencing business or opening a new business . . . shall file with the commissioner a certificate of registration, in a form prescribed by the commissioner, at least twenty days prior to commencing business or opening a new place of business . . . .

Section 526.6(c) of the New York State Sales and Use Tax Regulations provides, in part:

Resale exclusion. (1) Where a person, in the course of business operations, purchases tangible personal property or services which he intends to sell, either in the form in which purchased, or as a component part of other property or services, the property or services which he purchased will be considered as purchased for resale and therefore not subject to tax until he has transferred the property to his customer.

\* \* \*

(6) Tangible personal property purchased for use in performing services which are taxable under section 1105(c)(1), (2), (3) and (5) of the Tax Law is purchased for resale and not subject to tax at the time of purchase, where the property so sold (i) becomes a physical component part of the property upon which the services are performed, or (ii) is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax.

Example 6: A watch repairman purchases a new stem and places it in a watch that he is repairing for a customer. The purchase of the stem by the watch repairman is a purchase for resale not subject to tax at the time of its purchase as it will become a physical component part of property upon which services were performed.

Section 527.5(b) of the Sales and Use Tax Regulations provides, in part:

Exemptions. (1) The services of installing, maintaining, servicing or repairing tangible personal property are not taxable if the services were performed for resale. . . .

(2) Maintaining, servicing or repairing tangible personal property is not taxable if the property maintained, serviced or repaired is held for sale in the regular course of business.

Example 1: A repair shop charges a boat dealer for reconditioning boat motors which the dealer will resell. The reconditioning of the motors is not taxable because the motors are for resale.

### **Opinion**

With respect to issue 1, pursuant to Section 1101(b)(4) of the Tax Law and Section 526.6 of the Sales and Use Tax Regulations, the purchase of tangible personal property for use by the purchaser in performing services subject to tax under Section 1105(c)(3) of the Tax Law where such property purchased becomes a physical component part of the property upon which the services are performed or where such property purchased will actually be transferred to the customer in conjunction with the performance of the repair subject to tax, is not subject to sales and

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compensating use taxes. Therefore, the parts purchased by Petitioner to repair and refurbish farm mixers for his customer are not subject to sales and compensating use taxes. It is noted, however, that Petitioner must furnish his supplier with a properly completed Resale Certificate (Form ST-120) within 90 days from the date of purchase of the parts. See Section 1132(c) of the Tax Law and Section 532.4 of the Sales and Use Tax Regulations.

As for issue 2, pursuant to Section 1105(c)(3) of the Tax Law, the service of repairing and refurbishing of farm mixers which will be held for sale by Petitioner's customer in the regular course of its business is not subject to sales and compensating use taxes. Since Petitioner's customer receives the mixers as trade-ins and sells them to farmers after they are refurbished, it holds the mixers for sale in the regular course of business. Petitioner's customer, however, must furnish Petitioner with a properly completed Resale Certificate (Form ST-120) within 90 days after the performance of the service.

The above analysis applies only to sales of services to Petitioner's customer as described in the facts presented. It should be noted that the resale exemption does not apply if petitioner performs repair services for farmers or other individuals who do not hold the farm mixers for sale in the regular course of business but use the mixers themselves. Petitioner would be required to collect tax on its services in such case, unless the mixers are for use or consumption directly and predominantly in the production for sale of tangible personal property by farming, and Petitioner's customer furnishes Petitioner with a properly completed Farmer's Exemption Certificate (Form ST-125) within 90 days after the performance of the service. See Section 1105(c)(3)(vi) of the Tax Law.

Concerning issue 3, pursuant to Section 1134 of the Tax Law, Petitioner is selling services subject to tax and buying tangible personal property for resale. Therefore, Petitioner must register with the Department of Taxation and Finance for purposes of sales and use tax. It is noted that under Section 533.3(d) of the Sales and Use Tax Regulations, a person required to register with the Department of Taxation and Finance only because he or she is purchasing or selling tangible personal property for resale, and who is not required to collect any tax or pay any tax directly to the Department of Taxation and Finance, must file a return annually.

DATED: November 4, 1999

/s/  
John W. Bartlett  
Deputy Director  
Technical Services Bureau

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