

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-00(25)S
Sales Tax
May 31, 2000

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S000128C

On January 28, 2000, the Department of Taxation and Finance received a Petition for Advisory Opinion from The Terminix International Company, L.P., 860 Ridge Lake Blvd., Memphis, TN, 38120-9417.

The issue raised by Petitioner, The Terminix International Company, L.P., is whether the discount described in the facts of this Petition is deductible from the computation of receipts subject to sales tax.

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

Petitioner operates a licensed pest-control services business in New York State. Petitioner enters into contracts with either new or existing customers wherein, in exchange for a sum certain, Petitioner agrees to periodically inspect customer's premises and, if need be, apply insecticides, traps, or other devices intended to rid the premises of any pest infestation.

Upon entering into such a contract, Petitioner offers the customer the choice of (1) paying periodically as services are rendered, or (2) paying in full at the time of entering into the contract. When customers elect to pay periodically as services are rendered, the amount due does not accrue until the service is rendered.

When a customer elects to pay in full at the time of entering into the contract, the total amount due under the contract accrues in advance of the time that the services are rendered. A customer who elects to pay in full at the time the contract is executed receives a 10% discount from the amount that would otherwise be paid if he or she elected to pay on a service to service basis.

A copy of the standard contract used by Petitioner and its customers entitled "Terminix-Residential Pest Control Service Agreement" (the contract) was submitted as part of this Petition. The contract sets forth that it is a "one year agreement automatically renewed on a service to service basis." Service is available on a monthly, every other month, or a quarterly basis. The "Method of Payment" portion of the contract sets forth that a "10% Discount One Year in Advance" is available to customers who pay the total amount that is due under the contract in one payment, rather than making a prorated portion of the total due at each service interval. A "CONTRACT VERIFICATION" form attached to the contract provides, in part:

You may receive your monthly statement prior to service, but your bill is not due until service has been rendered. If you prefer we can handle the initial 12 months all at once and offer you a 10% discount. The savings to you with postage, check and envelopes is almost equal to one month's free service.

Applicable Law and Regulations

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

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:

* * *

(3) Receipt. The amount of the sale price of any property and the charge for any service taxable under this article, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts....

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:

* * *

(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....

Section 526.5(d) of the Sales and Use Tax Regulations provides, in part:

Discounts. (1) Discounts which are granted by a vendor, for the purpose of encouraging prompt payment on an account, known as “early payment discounts” are not deductible from receipts.

Example 1: A vendor grants a purchaser a 2 percent discount for paying the price of a \$100 camera within 10 days, and expects payment of the full price within 30 days. The sales tax, in a 7 percent area, is \$7 on the taxable receipt of \$100, whichever method of payment the customer chooses.

DISCOUNT METHOD	FULL PRICE METHOD
\$100 Price	\$100
<u>7</u> Tax	<u>7</u>
\$107	\$107
<u>2</u> Discount	
\$105 Due	

(2) Discounts which represent a reduction in price, such as a trade discount, volume discount or cash and carry discount are deductible in computing receipts.

Opinion

The pest control services provided by Petitioner to customers in New York are subject to sales tax under Section 1105(c)(5) of the Tax Law. Customers of Petitioner enter into a contract which provides that Petitioner inspect for and treat pest infestation for a period of one year, at certain stated intervals. Depending on the plan purchased, Petitioner performs its service on a monthly, every other month, or a quarterly basis. The contract requires that customers pay a prorated portion of the contract after each service is rendered and sets forth that when customers pay on that basis, each prorated portion of the amount due under the contract accrues when each service is rendered. When a customer elects to purchase a year’s worth of service in advance, Petitioner offers a 10% discount off the total yearly charge that a customer is required to pay if the services were paid on a service to service basis.

In Petitioner’s situation, the 10% discount reduces the price of the service contract at the time of sale, when the contract is executed. It does not represent a discount from a set selling price for payment within a prescribed period. Therefore, based on the facts of this Petition and the cited terms of the contract, the 10% discount offered by Petitioner does not constitute an early payment discount

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as provided in Section 1101(b)(3) of the Tax Law and as described in Section 526.5(d)(1) of the Sales and Use Tax Regulations. In the case of customers who pay the full amount due under the contract in advance and receive the 10% discount, sales tax is computed on the actual amount paid, and such 10% discount is not considered part of the receipts subject to sales tax.

DATED: May 31, 2000

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

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