

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

TSB-A-03(45)S
Sales Tax
December 29, 2003

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S021206A

On December 6, 2002, the Department of Taxation and Finance received a Petition for Advisory Opinion from SSP Sewer Works Corporation, 3 M^cCrea Hill Road, Ballston Spa, New York, 12020.

The issue raised by Petitioner, SSP Sewer Works Corporation, is whether a one-time charge for the connection of a customer's sewerage system to Petitioner's main sewer line is subject to New York State sales and compensating use tax.

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

Petitioner is a private transportation corporation formed under Article 10 of the New York State Transportation Corporation Law. Petitioner provides sewerage services to a portion of the town of Ballston, New York in accordance with approvals obtained from the town of Ballston and county of Saratoga.

Petitioner's function is to transport sewage from residential and commercial customers to the county of Saratoga sewage treatment facility. This function is performed through Petitioner's operation and maintenance of a main sewer line located under public and private streets pursuant to utility easements acquired by Petitioner during the construction of the main sewer line.

Petitioner's customers own and operate their own sewerage systems on their own property. The customers' property is contiguous to the property operated by Petitioner for Petitioner's main sewer line. The customers connect their sewerage systems to Petitioner's main sewer line by means of a flange located on the main sewer line for the purpose of making such connections. Customers are responsible for the installation of their own sewerage system and connecting their systems to the flange on the main sewer line owned by Petitioner.

Petitioner and its customers each own and maintain their respective sides of the flange. Petitioner furnishes customers with a license for ingress and egress to Petitioner's side of the flange to construct and install the connection between the customer's sewerage system and the flange, and to operate and maintain such sewerage system and connection at the customer's expense. The license is fully transferable to the future transferees of the customer's property. Petitioner charges its customers a one-time fee (the "connection fee") for this license. The one-time connection fee does not include any charges for installation or materials needed to connect the customer's sewer system with Petitioner's sewer line.

The connection fee is determined by a formula projecting the customer's usage of the system, i.e., how many gallons per day of effluent a particular customer is likely to produce.

Petitioner also charges an annual fee for providing sewerage service from the customer's property to the sewage treatment facility. This annual fee is computed in a similar manner as the connection fee; i.e., computed on the basis of how many gallons per day of effluent a particular customer is likely to produce.

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, including gas and gas service and electricity and electric service of whatever nature, 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 and also including any charges by the vendor to the purchaser for shipping or delivery, and, with respect to gas and gas service and electricity and electric service, any charges by the vendor for transportation, transmission or distribution, regardless of whether such charges are separately stated in the written contract, if any, or on the bill rendered to such purchaser and regardless of whether such shipping or delivery or transportation, transmission, or distribution is provided by such vendor or a third party, but excluding any credit for tangible personal property accepted in part payment and intended for resale. . . .

* * *

(5) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume . . . conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor.

Section 1105(a) 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 . . . 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, 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 article. . . .

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

Receipt. (a) Definition. The word receipt means the amount of the sale price of any property and the charge for any service taxable under articles 28 and 29 of the Tax Law, valued in money, whether received in money or otherwise. The following subdivisions of this section discuss elements of a receipt.

* * *

(e) Expenses. All expenses, including telephone and telegraph and other service charges, incurred by a vendor in making a sale, regardless of their taxable status and regardless of whether they are billed to a customer are not deductible from the receipts.

Section 526.7(b) of the Sales and Use Tax Regulations provides:

Consideration. The term consideration includes monetary consideration, exchange, barter, the rendering of any service, or any agreement therefor. Monetary consideration includes assumption of liabilities, *fees*, rentals, royalties or any other charge that a purchaser, lessee or licensee is required to pay. (Emphasis added)

Section 527.7 of the Sales and Use Tax Regulations provides, in part:

Maintaining, servicing or repairing real property.

(a) Definitions. (1) Maintaining, servicing and repairing are terms which are used to cover all activities that relate to keeping real property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition. Among the services included are services on a building itself such as painting; services to the grounds, such as lawn services, tree removal and spraying; trash and garbage removal and *sewerage service* and snow removal. (Emphasis added)

* * *

(b) Imposition. (1) The tax is imposed on receipts from every sale of the services of maintaining, servicing or repairing real property, whether inside or outside of a building.

* * *

(2) All services of trash or garbage removal are taxable, whether from inside or outside of a building or vacant land.

Example 3: A carting firm picks up trash and garbage at its customers' premises and dumps the materials at sites away from its customers' premises. Receipts from the sale of this service are taxable.

Opinion

Petitioner provides sewerage services to a portion of the town of Ballston, New York in accordance with approvals obtained from the town of Ballston and county of Saratoga. Petitioner's function is to transport sewage from residential and commercial customers to the county of Saratoga sewage treatment facility. Customers are responsible for the installation of their own sewerage systems and for connecting their systems to the flange on the main sewer line owned by Petitioner.

A one time up-front activation fee associated with the initial application for cellular phone service and used to recoup the costs of a customer credit check, assignment of a phone number and other administrative expenses is considered to be a component part of the cellular phone service to which it relates and is a taxable receipt. See *Cellular Telephone Company*, Adv Op Comm T&F, October 11, 1989, TSB-A-89(38)S. In *Enercon Service Inc.*, Adv Op St Tx Comm, September 10, 1980, TSB-H-80(173)S, the charges for "start-up" service for the installation of heating and air conditioning units were considered part of the service of installing a capital improvement and were thus not subject to sales tax.

Petitioner's only service to its customers is providing sewerage service. Such services are taxable pursuant to section 1105(c)(5) of the Tax Law. See section 527.7(a)(1) of the Sales and Use Tax Regulations. Petitioner concedes that the annual service charge is subject to sales tax under section 1105(c)(5) of the Tax Law. Unlike the facts in *Enercon*, *supra*, Petitioner's connection charges do not relate to and are not a charge for the actual construction and installation services necessary to physically interconnect a customer's system to Petitioner's system. Petitioner provides

TSB-A-03(45)S
Sales Tax
December 29, 2003

only the sewerage service to its customers. Petitioner's connection fee is in the nature of an activation fee intended to recoup Petitioner's administrative expenses and other costs in providing sewerage service to its customers, and as such constitutes a component part of its charges and receipts for its taxable service. See *Cellular Telephone Company, supra*. Thus, Petitioner's one-time connection fee is merely an additional charge for sewerage service and is subject to sales tax under section 1105(c)(5) of the Tax Law.

DATED: December 29, 2003

/s/
Jonathan Pessen
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Technical Services Division

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