

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

TSB-A-82(40)S
Sales Tax
November 24, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S811118A

On November 18, 1981 a Petition for Advisory Opinion was received from Standard Commercial Cartage, Inc., 263 Washington Avenue, St. James, New York 11780.

The issue raised herein is whether the purchase of refuse containers provided to customers of Petitioner's trash removal service is subject to sales tax.

Petitioner is a commercial trash removal company. Petitioner offers to its customers the service of trash removal alone, the fee for this service being based on the volume of trash and frequency of pick-up. For an additional charge the customer is supplied with containers, the fee for each container dependent on its size. While the bulk of its customers pay for both trash pick-up and the use of containers, some 6% of its customers during 1981 did not avail themselves of containers, while some 3% took containers without the service of trash pick-up. While the fee charged to each customer is the sum of the charge for pick-up and the charge for containers, the two are amalgamated on the invoices presented to the customers.

Section 1105(a) of the Tax Law imposes the State sales tax on the receipts from retail sales of tangible personal property. Section 1101(b)(4) of the Tax Law excludes from the definition of "retail sales" sales for resale. The term "sale" is defined, in section 1101(b)(5) of the Tax Law, to include any "rental, lease or license to use."

It follows from the foregoing that the dispositive question herein is whether Petitioner rents the containers to its customers or merely supplies them as part of its service. In the usual case, where trash pick-up and container rental fees are separately stated on the invoices issued to customers it is held that the containers are purchased for resale and may thus be purchased without payment of tax. However, where a vendor of the service of trash removal in actuality operates within the context of a fee schedule providing for separate fees for service and rental, that is sufficient, even in the absence of a separation of charges in the billing, to warrant a finding to the effect that the containers are rented to the customers, and thus purchased for resale. City of Rome, Advisory Opinion, TSB-H-81(86)S. Such is the case in the present instance. Under the facts presented by Petitioner, and assuming the trash containers to be utilized solely as there described, no tax is due on Petitioner's

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purchases of the trash containers. This conclusion is applicable to both State and locally imposed sales taxes. In order to avail itself of this exclusion Petitioner should present its vendors with a properly completed Resale Certificate (Form ST-120).

DATED: April 12, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau