

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

TSB-A-90(3)S
Sales Tax
January 18, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S890830A

On August 30, 1989 a Petition for Advisory Opinion was received from British Telecom (CBP) Inc. 150 E. 52nd Street, 12th Floor Tax Department, New York, New York 10022.

The issue raised by petitioner, British Telecom (CBP) Inc., is whether labor when used to fulfill service or warranty contracts may be purchased for resale.

Petitioner sells and installs electronic equipment and charges its customer for two types of labor. They are: (1) installation of equipment; and (2) maintenance and warranty work. The charge for installation of equipment is on a project by project basis and is based on the actual hours spent on installation. The customer may also pay a fee for maintenance and warranty work annually or periodically whether or not any service is performed.

The following section of the Sales Tax Regulations apply to Petitioner's transactions:

§ 527.5 (b) Exceptions. (1) The services of installing, maintaining, servicing or repairing tangible personal property are not taxable if the services were performed for resale. See section 526.6(c)(8) of this Title.

(c) Maintenance and service contracts. (1) The purchase of a maintenance or service contract is a taxable transaction.

(2) The vendor making sales of such contracts may purchase for resale any tangible personal property which is transferred to his customer in connection with the services rendered.

(3) Any charge made for services rendered in addition to the purchase price of the maintenance or service contract is taxable.

Example 1: A vendor selling home appliances also offers a 12-month extended service contract with unlimited parts and labor. The charge for the service contract is taxable.

Example 2: The same vendor also offers a service contract for the price of \$50 under which the purchaser will receive one service call at no additional charge, including parts and labor, and each additional service call will cost the purchaser \$5 for parts and labor. All the charges are receipts subject to tax.

(d) Warranty work. (1) Repair or maintenance services rendered, without charge to a customer under a warranty agreement are not taxable.

(2) The vendor performing the warranty services may purchase for resale any tangible personal property which is transferred to his customer in connection with the services rendered.

(3) Charges for services rendered which are not covered by the warranty are taxable.

(4) Where a manufacturer reimburses a vendor or repairman performing warranty work, the reimbursement is not taxable, as it was for resale.

Based upon the above sections of its Sales Tax Regulations, Petitioner may issue a Resale Certificate to its subcontractors for the purchase of labor used to perform installations, maintenance, repairs and warranty services.

DATED: January 18, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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