

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

TSB-A-91 (30)S
Sales Tax
March 27, 1991

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910304A

On March 4, 1991 a Petition for Advisory Opinion was received from Confidential Data Management, Division of Empire Recycling Corporation, P.O. Box 353, Utica, New York 13503.

The issue raised by Petitioner, Confidential Data Management, Division of Empire Recycling Corporation, is whether it must charge sales tax on charges for the pick-up and shredding of confidential documents.

Petitioner is in the business of destroying confidential documents for a fee. It picks up confidential documents at customer locations with its own vehicles. The documents become property of the Petitioner once they are loaded onto the Petitioner's truck. The documents are then transported to the Petitioner's plant where they are shredded and bailed by the Petitioner's processing equipment. If the shredded paper is of a high enough quality, it is subsequently sold to paper recycling plants. If the shredded paper is not suitable for recycling, it is ultimately disposed of.

Petitioner bills its customers in two parts. One charge is for the shredding of the customer's documents. This charge is based upon the total number of pounds of paper shredded for the customer. The second charge is a pick-up charge and is typically a "flat-fee" that is charged to the customer.

Section 1105(c)(5) of the Tax Law imposes a sales tax upon the receipts from "Maintaining, servicing or repairing real property, property or land. . . whether such services are performed in or outside of a building. . . ." Such section specifically includes "trash removal from buildings" as a service subject to tax.

The Courts have held that all aspects of trash removal are subject to tax and that it does not matter whether or not the trash was generated as a result of an industrial process. (See: Rochester Gas and Electric Corporation v. State Tax Commn., 126 AD 2d 238, affd 71 NY 2d 931 and Cecos International, Inc. v. State Tax Commn., 126 AD 2d 884, affd 71 NY 2d 934)

Both Rochester and Cecos involved the taxability of the transportation costs arising from the transportation of industrial waste products. In Rochester the taxpayer was an energy producer which generated fly ash as a waste product of its energy production. In Cecos the company operated a landfill and waste treatment facility for the disposal of chemical waste. Both companies used independent haulers to transport the waste from the waste generation location to the waste disposal location.

In these cases, the courts held that the transportation costs were not a nontaxable transportation service but were taxable pursuant to Tax Law Section 1105(c)(5) as "trash removal from buildings".

TSB-A-91 (30)S
Sales Tax
March 27, 1991

Furthermore, the State Tax Commission held in Pioneer Warehouse Corp., Dec St Tx Comm, February 22, 1980, TSB-H-80(119)S that the providing of a service in which records consisting of files belonging to attorneys, accountants, banks and brokerage houses were carted away to an incinerator to be burned came within the definition of trash removal and thus such service was subject to sales tax pursuant to Section 1105(c)(5) of the Tax Law.

Petitioner's services consisting of picking up confidential documents at customers' locations, transporting them to its plant, and shredding and disposing of said documents come within the parameters of the above cited decisions and thus such services are subject to the imposition of sales tax pursuant to Section 1105(c)(5) of the Tax Law.

DATED: March 27, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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