

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

TSB-A-03(31)S  
Sales Tax  
July 17, 2003

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S020726B

On July 26, 2002, the Department of Taxation and Finance received a Petition for Advisory Opinion from Regional Scaffolding & Hoisting Co., Inc., 3900 Webster Avenue, Bronx, New York, 10470.

The issues raised by Petitioner, Regional Scaffolding & Hoisting Co., Inc., are:

- 1) Whether sales tax is due on purchases of equipment by Petitioner which is rented to Petitioner's customers, and on purchases of safety netting.
- 2) Whether sales tax is due on receipts from sales by Petitioner.
- 3) What record keeping requirements are imposed on Petitioner.
- 4) Whether Petitioner has recourse when its customer refuses to either provide an exemption document or pay tax.
- 5) Whether any special sales tax provisions apply with respect to purchases or sales made by Petitioner in connection with work done by Petitioner at the site of the World Trade Center (WTC) terrorist attack.

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

Petitioner is in the business of renting scaffolding, hoisting equipment and temporary pedestrian walkways (sidewalk bridge protection), and selling safety netting to customers in a variety of different situations. Petitioner itself does not alter, improve, repair or maintain real property. Customers may be building owners or general contractors. The building owners may be non-exempt private persons, exempt organizations or government entities. The general contractors may be providing services for private persons, exempt organizations or exempt governmental entities, or as an agent of an exempt governmental entity. The projects for which the scaffolding, hoisting equipment, temporary walkways, or netting are provided may be capital improvement projects or repair and maintenance projects.

Each contract performed by Petitioner has three components which may be separately stated on the bill or customer invoice:

- 1) The rental of scaffolding, hoisting equipment and pedestrian walkways, and the sale of safety netting;

2) The erection or installation of the scaffolding, hoisting equipment, pedestrian walkways or safety netting; and,

3) The dismantling and removal of the scaffolding, hoisting equipment, pedestrian walkways or safety netting. The safety netting is ultimately transferred to the customer.

Petitioner worked at the WTC site at Ground Zero, providing safety netting and temporary pedestrian walkways as described above.

**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:

(1) Purchase at retail. A purchase by any person for any purpose other than those set forth in clauses (A) and (B) of subparagraph (i) of paragraph (4) of this subdivision.

\* \* \*

(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 and also including any charges by the vendor to the purchaser for shipping or delivery . . . 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 . . . 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. . . .

(4) Retail sale. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3), (5), (7) and (8) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax. Notwithstanding the preceding provisions of this subparagraph, a sale of any tangible personal property to a contractor,

subcontractor or repairman for use or consumption in erecting structures or buildings, or building on, or otherwise adding to, altering, improving, maintaining, servicing or repairing real property, property or land, as the terms real property, property or land are defined in the real property tax law, is deemed to be a retail sale regardless of whether the tangible personal property is to be resold as such before it is so used or consumed, except that a sale of a new mobile home to a contractor, subcontractor or repairman who, in such capacity, installs such property is not a retail sale. . . .

(5) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume (including, with respect to computer software, merely the right to reproduce), 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.

(6) Tangible personal property. Corporeal personal property of any nature. . . .

Section 1105 of the Tax Law provides, in part:

Imposition of sales tax. 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.

Section 1115(a) of the Tax Law provides, in part:

Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

\* \* \*

(15) Tangible personal property sold to a contractor, subcontractor or repairman for use in (i) erecting a structure or building (A) of an organization described in subdivision (a) of section eleven hundred sixteen . . . or (ii) adding to, altering or improving real property, property or land (A) of such an organization . . . as the terms real property, property or land are defined in the real property tax law; provided, however, no exemption shall exist under this paragraph unless such

tangible personal property is to become an integral component part of such structure, building or real property.

(16) Tangible personal property sold to a contractor, subcontractor or repairman for use in maintaining, servicing or repairing real property, property or land (i) of an organization described in subdivision (a) of section eleven hundred sixteen . . . as the terms real property, property or land are defined in the real property tax law; provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property.

Section 1116(a) of the Tax Law provides, in part:

Except as otherwise provided in this section, any sale . . . to any of the following . . . shall not be subject to the sales and compensating use taxes imposed under this article:

(1) The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer . . .

(2) The United States of America, and any of its agencies and instrumentalities, insofar as it is immune from taxation where it is the purchaser, user or consumer . . .

(3) The United Nations or any international organization of which the United States of America is a member where it is the purchaser, user or consumer . . .

(4) Any corporation, association, trust, or community chest, fund, foundation, or limited liability company, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, (except as otherwise provided in subsection (h) of section five hundred one of the United States internal revenue code of nineteen hundred fifty-four, as amended), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office;

(5) A post or organization of past or present members of the armed forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization. . . .

\* \* \*

(6) The following Indian nations or tribes residing in New York state: Cayuga, Oneida, Onondaga, Poospatuck, Saint Regis Mohawk, Seneca, Shinnecock, Tonawanda and Tuscarora, where it is the purchaser, user or consumer.

(7) A not-for-profit corporation operating as a health maintenance organization subject to the provisions of article forty-four of the public health law.

(8) Cooperative and foreign corporations doing business in this state pursuant to the rural electric cooperative law.

Section 1132 of the Tax Law provides, in part:

(a) (1) Every person required to collect the tax shall collect the tax from the customer when collecting the price, amusement charge or rent to which it applies. If the customer is given any sales slip, invoice, receipt or other statement or memorandum of the price, amusement charge or rent paid or payable, the tax shall be stated, charged and shown separately on the first of such documents given to him. The tax shall be paid to the person required to collect it as trustee for and on account of the state.

\* \* \*

(c)(1) For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all receipts for property or services of any type mentioned in subdivisions (a), (b), (c) and (d) of section eleven hundred five . . . are subject to tax until the contrary is established, and the burden of proving that any receipt . . . is not taxable hereunder shall be upon the person required to collect tax or the customer. Except as provided in subdivision (h) or (k) of this section, unless (i) a vendor, not later than ninety days after delivery of the property or the rendition of the service, shall have taken from the purchaser a resale or exemption certificate in such form as the commissioner may prescribe, signed by the purchaser and setting forth the purchaser's name and address and, except as otherwise provided by regulation of the commissioner, the number of the purchaser's certificate of authority, together with such other information as the commissioner may require, to the effect that the property or service was purchased for resale or for some use by reason of which the sale is exempt from tax under the provisions of section eleven hundred fifteen, and, where such resale or exemption

certificate requires the inclusion of the purchaser's certificate of authority number or other identification number required by regulations of the commissioner, that the purchaser's certificate of authority has not been suspended or revoked . . . or (ii) the purchaser, not later than ninety days after delivery of the property or the rendition of the service, furnishes to the vendor: any affidavit, statement or additional evidence, documentary or otherwise, which the commissioner may require demonstrating that the purchaser is an exempt organization described in section eleven hundred sixteen, the sale shall be deemed a taxable sale at retail.

Section 1133(a) of the Tax Law provides:

Except as otherwise provided in section eleven hundred thirty-seven, every person required to collect any tax imposed by this article shall be personally liable for the tax imposed, collected or required to be collected under this article. Any such person shall have the same right in respect to collecting the tax from his customer or in respect to nonpayment of the tax by the customer as if the tax were a part of the purchase price of the property or service, amusement charge or rent, as the case may be, and payable at the same time; provided, however, that the tax commission shall be joined as a party in any action or proceeding brought to collect the tax.

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

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

(a) The term retail sale or sale at retail means the sale of tangible personal property to any person for any purpose, except as specifically excluded.

(b) Special rule--sales specifically included as retail sales.

(1) A sale of any tangible personal property to a contractor, subcontractor or repairman for use or consumption in erecting structures or buildings or adding to, altering, improving, maintaining, servicing or repairing real property, property or land, is deemed to be a retail sale, regardless of whether the tangible personal property is to be resold as such before it is used or consumed. (See Part 541 of this Chapter.)

Section 526.7 of the Sales and Use Tax Regulations provides, in part:

Sale, selling or purchase. (Tax Law, §1101(b)(5)) (a) Definition. (1) The words sale, selling or purchase mean any transaction in which there is a transfer of title or possession, or both, of tangible personal property for a consideration.

(2) Among the transactions included in the words sale, selling or purchase are exchanges, barter, rentals, leases or licenses to use or consume tangible personal property.

Section 527.5(a) of the Sales and Use Tax Regulations provides, in part:

Imposition. (1) The tax is imposed on receipts from every sale of the services of installing, maintaining, servicing or repairing tangible personal property, by any means including coin-operated machines, whether or not any tangible personal property is transferred in conjunction with the services.

(2) Installing means setting up tangible personal property or putting it in place for use.

Section 529.7(h) of the Sales and Use Tax Regulations provides, in part:

Sales to exempt organizations. (1) Any sale or amusement charge to or any use or occupancy by an exempt organization to which an exempt organization certificate has been issued is exempt from sales and use tax.

(2) In order to exercise its right to exemption the organization must be the direct purchaser, occupant or patron of record. It must also be the direct payer of record and must furnish its vendors with a properly completed exempt organization certification. Direct purchaser, occupant or patron as used in this paragraph includes any agent or employee authorized by the organization to act on its behalf in making such purchases, provided the organization and its agent or employee are both identified on any bill or invoice. An organization is the direct payer of record where direct payment is made by the organization or from its funds directly to the vendor.

Section 532.1(d) of the Sales and Use Tax Regulations provides:

Vendor's remedy for customer's failure to pay tax. (1) Every person required to collect any tax imposed by article 28 and pursuant to the authority of article 29 of the Tax Law shall have the same right in respect to collecting the tax from his customer or in respect to nonpayment of the tax by the customer as if the tax were a part of the purchase price of the property or service, amusement charge or rent, as the case may be, and payable at the same time; provided, however, that the Commission of Taxation and Finance shall be joined as a party in any action or proceeding brought to collect the tax.



(2) The joining of the Commissioner of Taxation and Finance as a party in any action or proceeding brought to collect the tax shall be effected by service upon the Commissioner of Taxation and Finance of a summons and complaint naming the Commissioner of Taxation and Finance as a plaintiff or defendant thereon.

Section 533.2 of the Sales and Use Tax Regulations provides, in part:

(a) General. (1) For the proper administration of the Sales and Use Tax Law and to prevent evasion of the sales tax, it is statutorily presumed that all receipts from sales and purchases of property or services of any type mentioned in subdivisions (a) through (d) of section 1105 of the Tax Law . . . are subject to the tax until the contrary is established. The burden of proving that any receipt, amusement charge or rent is not taxable is on the vendor or the customer. To satisfy his burden of proof, a vendor must maintain records sufficient to verify all transactions.

(2) Upon audit by the department, or at such other times as the department requests, the vendor or user must present all the records described in this Part, kept in a manner suitable to determine the correct amount of tax due, together with such documentation, summaries and schedules, including any New York State or Federal tax returns or schedules as the department may request. The vendor or user may elect to retain records as hard-copy records, electronic records, or both. Such vendor or user must provide the auditors of the department with suitable facilities for conducting their audit or examination. In those instances where the vendor or user maintains or processes records on an electronic data processing system, the department reserves the right to have such records presented on machine-sensible form, and the vendor or user must furnish access to such equipment or records as is necessary for the department to carry out its standard audit procedures. . . .

(3) All records required to be kept by this Part shall be preserved for a period of three years from the due date of the return to which they relate, or the date of filing, if later, except as provided in paragraph (4) of this subdivision, and longer than three years if their contents are material to any period open or extended pursuant to statute, or in any action or proceeding pending before the Department of Taxation and Finance or in a judicial proceeding or action. . . .

\* \* \*

(b)(4) Exemption certificates must be dated and retained in order to prove exempt sales. Once a properly completed certificate is obtained, it relieves the seller of liability to collect the tax on transactions to which the certificate applies. Every vendor accepting an exemption certificate must maintain a method of associating a sale made for exempt purposes with the certificate on file. The burden of proving



the validity of any properly completed certificate rests with the customer or other person who issues the certificate.

Section 541.3(d)(2)(iv) of the Sales and Use Tax Regulations provides, in part:

Except for agency contracts, contractors' purchases of construction supplies which do not become part of an exempt organization's real property and are used or consumed by the contractor, as well as purchases of taxable services, such as electricity used by the contractor, are subject to the tax.

The following types of property and services are representative, but not intended to be all-inclusive, of contractor's purchases which are subject to tax, irrespective of whether the contractor has a time and material, lump sum, or other type of contract (except agency contract), with an exempt organization:

- (a) construction machinery and equipment, including rentals and repair parts;
- (b) contractors' office supplies;
- (c) contractors' supplies, tools, and miscellaneous equipment, whether purchased or rented, including materials to make forms and scaffolding; and
- (d) any other items purchased or rented by a contractor for his use in performing the contract and not incorporated into the realty.

Example 7: Lumber and other materials which are used to build forms are not exempt since they do not become a component part of the structure.

Example 8: Equipment rentals under the dominion and control of the contractor, such as rentals of cranes, bulldozers, backhoes, etc. for use in building a structure for an exempt organization are subject to tax.

Section 541.9(a) of the Sales and Use Tax Regulations provides, in part:

General. The purchase, rental, lease or license to use construction equipment . . . by a contractor is subject to sales and use tax.

Section 541.9(c)(1) of the Sales and Use Tax Regulations provides, in part:

Rentals and leases of equipment to contractors.

(i) Where a contractor leases equipment, the contractor is liable for the combined State and local sales and use tax on the total charges at the highest rate in effect in any jurisdiction in which the equipment is used during the lease payment period, (e.g., daily, weekly, monthly, depending on the frequency of payment).

\* \* \*

(iv) All expenses incurred by a lessor in determining the amount charged for rental of tangible personal property to a contractor, such as: setting up, assembling, installing and/or dismantling, are elements of the total receipt subject to tax, regardless of their taxable status and whether they are separately billed to the lessee.

### **Opinion**

Petitioner is in the business of renting scaffolding, hoisting equipment and pedestrian walkways to its various customers. Included with the rental charge for such equipment are charges for the installation and subsequent removal of the equipment. Such charges may be separately stated on Petitioner's bill or invoice to its customer. Petitioner also provides safety netting which is ultimately transferred to its customer. Customers may be building owners or general contractors. The building owners may be non-exempt private persons, exempt organizations or government entities. The general contractors may be providing services for private persons, exempt organizations or exempt governmental entities, or as an agent of an exempt governmental entity. The projects for which the scaffolding, hoisting equipment, temporary pedestrian walkways, or netting are provided may be capital improvement projects or repair and maintenance projects.

Petitioner requests guidance regarding its sales and use tax obligations when purchasing equipment and supplies, and, when charging its customers for equipment, supplies and related services.

Purchases of tangible personal property exclusively for resale are not retail sales subject to sales tax. See section 1101(b)(4)(i) of the Tax Law and section 526.6(c) of the Sales and Use Tax Regulations. A rental or lease of tangible personal property constitutes a sale for sales tax purposes. See section 1101(b)(5) of the Tax Law and section 526.7(a)(1) and (2) of the Sales and Use Tax Regulations. Therefore, Petitioner's rentals of equipment such as scaffolding, temporary pedestrian walkways, or hoisting equipment are retail sales of tangible personal property for purposes of section 1105 of the Tax Law. The provision of safety netting by Petitioner to its customers is also a retail sale of tangible personal property. Petitioner is not a construction contractor for sales tax purposes since it does not alter, improve, repair or maintain real property. Rather, Petitioner is a vendor of tangible personal property and related services. See section 541.2(d), (e) of the Sales and Use Tax Regulations. Therefore, Petitioner's purchases of equipment (i.e., scaffolding, hoisting equipment and pedestrian walkways) which it intends exclusively for rental to customers are

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considered to be purchases for resale not subject to sales tax. Likewise, purchases of safety netting which Petitioner intends exclusively for resale are not subject to sales tax.

It is presumed that all receipts for property or service of any type mentioned in section 1105 of the Tax Law are subject to tax until the contrary is established. The burden of proving that any receipt is not taxable shall be upon the person required to collect the tax and the customer. See section 1132(c) of the Tax Law and section 532.4 of the Sales and Use Tax Regulations. Petitioner's receipts from rentals to contractors are subject to the combined State and local sales and use taxes at the rate in effect in the jurisdiction in which such equipment is delivered to the contractor. If the contractor uses the equipment in a locality with a higher rate than the locality where it took delivery of the equipment, it owes the tax on the difference. See section 541.9(c)(1)(i) of the Sales and Use Tax Regulations. Accordingly, Petitioner, as a vendor of such equipment, is required to collect sales tax on its sales and rentals of safety netting, scaffolding, temporary pedestrian walkways and hoisting equipment, whether the customer's project is a capital improvement or a repair, unless the purchaser can establish that it is exempt from tax or the sale is otherwise exempt. The additional charges for installation and removal are not deductible from the taxable rental or sale charges regardless of whether those charges are separately stated. These charges are a necessary component of the rental of the property. See Shroid Construction, Inc., Adv Op Comm T & F, July 12, 2002, TSB-A-02(30)S. Since Petitioner is merely renting or selling pedestrian walkways and other equipment to its customers, Petitioner is required to collect the sales tax on the full amount of its charges at the rate in effect in the jurisdiction in which the tangible personal property is delivered to the contractor.

When Petitioner, within 90 days of the transaction, accepts in good faith from its customer an appropriate and properly completed exemption document showing that the purchase is exempt from sales tax, Petitioner is relieved of its burden of proving that the transaction is exempt and need not collect tax on sales or rentals to that customer. See section 1132(c) of the Tax Law. Petitioner's failure to collect tax from a customer who does not provide such exemption documents makes Petitioner personally liable for the tax it failed to collect unless it can otherwise show that the transaction is exempt from tax. See section 1133(a) of the Tax Law. In this regard, it should be noted that a *Certificate of Capital Improvement* (Form ST-124) does not allow a contractor or any other person to purchase or rent tangible personal property exempt from tax.

When Petitioner's customer is a building owner that is not an organization or governmental entity exempt from sales tax, Petitioner is making a taxable sale or rental of equipment to its customer when it rents scaffolding, equipment, pedestrian walkways and sells safety netting. When its customer is a building owner that is an organization exempt from sales tax, Petitioner's rental or sale of equipment will be exempt from tax. Organizations described in section 1116(a)(3), (4), (5), (6), (7) or (8) of the Tax Law may make tax exempt purchases by giving Petitioner a properly completed *Exempt Organization Exempt Purchase Certificate* (Form ST-119.1). The organization claiming exemption from the tax must be the purchaser of record on Petitioner's bill or invoice and must be the payer of record. See section 529.7(h) of the Sales and Use Tax Regulations.

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When Petitioner's customer is a building owner that is a governmental entity qualifying for exemption from sales tax under section 1116(a)(1) or (2) of the Tax Law, Petitioner's rental or sale of equipment will be exempt from tax. Petitioner must obtain a governmental purchase order from its customer to substantiate the exempt nature of the sale or rental. Petitioner's invoice must name the governmental entity as the purchaser.

Diplomatic missions and diplomatic personnel are eligible to make exempt purchases of tangible personal property to the extent authorized by the United States Department of State Office of Foreign Missions. See section 529.5 of the Sales and Use Tax Regulations. Certain nonprofit property and casualty insurance companies are also exempt from State and local sales and use taxes. See section 6707 of the Insurance Law. Limited dividend housing companies are exempt from State (but not locally imposed) sales and use tax. See section 93(1) of the Private Housing Finance Law. These organizations should give a vendor a copy of a letter from the Exempt Organization Unit of the Department of Taxation and Finance naming the specific company as exempt to substantiate their exempt status. Federally chartered credit unions are also exempt from State and local sales and use taxes, and must issue a properly completed *Exempt Organization Exempt Purchase Certificate* (Form ST-119.1).

When Petitioner's customer is a general contractor and the contractor is doing work for an exempt organization, Petitioner's rental or sale of equipment is subject to tax. It does not matter whether the contractor is making a capital improvement to the exempt organization's real property or doing repair or maintenance services to the organization's real property. Since the equipment does not become an integral component part of the exempt organization's real property, it does not qualify for exemption under section 1115(a)(15) or (16) of the Tax Law. Accordingly, there is no acceptable exemption document that a contractor may offer Petitioner in lieu of paying the sales tax.

When Petitioner's customer is a general contractor who has been appointed as an agent of an exempt organization other than an Industrial Development Agency (IDA), Petitioner's rental or sale of supplies or equipment to such contractor is exempt from sales tax. Purchases of supplies and equipment by a contractor who is a bonafide agent of an organization must be within the scope of the agency agreement, the exempt organization must be legally liable for the purchase, and, in the case of the sale of equipment, the exempt organization must receive title to the equipment. Where the scope of the agreement between the exempt organization or governmental entity and the contractor does not encompass the purchase of supplies and equipment to be used by the named contractor, Petitioner must collect tax on sales or rentals of such supplies and equipment.

When Petitioner's customer is a bonafide agent of an IDA, Petitioner's customer must obtain a letter from the IDA written on IDA letterhead, which is signed by a responsible officer of the IDA, contains a statement identifying the contract, the project, and the contractor, and authorizes the contractor to make purchases of equipment and supplies for the project as agent of the IDA. When making purchases as agent of the IDA, the contractor need only provide Petitioner with a copy of this letter to establish the exemption. For sales made to an IDA or its agent, each bill or invoice issued by Petitioner must identify the IDA project, identify the purchaser and indicate whether the

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purchaser was the IDA or a contractor acting as an agent for the IDA. If the letter from the IDA provided by the contractor to Petitioner does not state that the contractor is an agent of the IDA for purposes of purchasing supplies and equipment to be used by the named contractor, Petitioner must collect tax on sales of supplies and rentals of equipment. See Technical Services Bureau Memorandum Tax Status of IDA Projects, April 1, 1987, TSB-M-87(7)S.

Generally, Petitioner is required to maintain records sufficient to substantiate its taxable and exempt purchases and sales for a period of three years after the due date of the sales and use tax return to which such purchases and sales relate, or the actual date the return was filed, whichever is later. Under certain conditions, Petitioner may be required to maintain certain records for a period of more than three years. Petitioner must maintain a system of associating various exemption documents with specific sales transactions. See section 533.2 of the Sales and Use Tax Regulations.

Where Petitioner's customer fails to pay sales tax appearing on Petitioner's bill or invoice or fails to provide an appropriate and properly completed exemption document, Petitioner is personally liable for the tax it was required to collect. However, the customer remains liable for the payment of the tax and Petitioner has the same right in respect to collecting the tax from its customer or in respect to nonpayment of the tax by the customer as if the tax were a part of the purchase or rental price of the property and payable at the same time. The Commissioner of Taxation and Finance must be joined as a party in any action or proceeding brought to collect the tax. See section 1133(a) of the Tax Law.

Petitioner asks if there are special statutory provisions concerning sales and purchases made in connection with work performed at the site of the World Trade Center of which it should be aware. Currently, there are no special exemptions from sales tax pertaining to Petitioner's sales and rentals with regard to work being done at the site of the World Trade Center.

DATED: July 17, 2003

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