

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

TSB-A-05(21)S
Sales Tax
June 1, 2005

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S041112A

On November 12, 2004, the Department of Taxation and Finance received a Petition for Advisory Opinion from Tuboscope Pipeline Services, Inc., 2853 Holmes Road, P. O. Box 808, Houston, Texas, 77001.

The issue raised by Petitioner, Tuboscope Pipeline Services, Inc., is whether its charges for pipeline inspection and management services are subject to sales tax.

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

Petitioner provides pipeline inspection and management services. Petitioner collects data on the condition of a customer's pipeline, analyzes the data at its home office in Texas and prepares a report that is later delivered to its customer. Data is collected by a mechanized robotic device known as a "smart pig" or "pig" owned by Petitioner. Petitioner launches the pig into the pipeline to be analyzed. The pig traverses the pipeline system, recording various types of data. At the terminal point of its traverse the customer brings the pig into a trap and Petitioner retrieves the pig. Each traverse takes between 2 days and a week depending on the length of the pipeline and inspection results desired.

In some of the pipelines, the pig traverses its entire course within New York State. In others, it traverses its course partly within New York and partly outside New York (in the case of a transborder pipeline inspection). In the latter case, the pig is launched into a pipeline within New York and retrieved outside the State or vice versa.

Once the pig is retrieved, it is taken to a facility outside New York State. At this facility, Petitioner downloads the data recorded by the device and performs engineering analyses using proprietary computer technology to determine the condition of the customer's pipeline. This analysis typically takes 2 to 3 weeks to complete. The results of the analysis are sent out in reports that are delivered to the customer.

Petitioner then invoices the customer for its services. The service fee is a single fee that is not broken down either geographically (i.e., by location of the segments of each traverse) or by activity (e.g., data collection versus analysis).

Petitioner does not perform any repair services in conjunction with its inspection and management services. The only result of Petitioner's survey is to record the condition of the pipeline. It is the responsibility of the customer to perform activities to remedy any deficiencies noted in Petitioner's report.

Applicable law and regulations

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 . . . upon:

* * *

(c) The receipts from every sale, except for resale, of the following services:

* * *

(3) Installing tangible personal property, excluding a mobile home, or maintaining, servicing or repairing tangible personal property, including a mobile home, not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith, . . .

* * *

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

Installing, repairing, servicing and maintaining tangible personal property.

(a) 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.

* * *

(3) Maintaining, servicing and repairing are terms used to cover all activities that relate to keeping tangible personal property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition.

* * *

Example 6: A company operates a diagnostic service in which it tests an appliance for a set fee, but does not repair the appliance. The charge for the diagnostic service is taxable.

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.

* * *

(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.

Opinion

Petitioner uses a mechanized robotic device known as a “smart pig” to examine and inspect the condition of its customer’s pipeline. Paragraphs (3) and (5) of section 1105(c) of the Tax Law impose sales tax on the services of repairing, maintaining or servicing tangible personal property or real property. Sections 527.5 and 527.7 of the Sales and Use Tax Regulations define the terms repair, maintenance and service as all activities that relate to keeping property in a condition of fitness, efficiency, readiness or safety. Furthermore, section 527.5(a)(3), Example 6, of the Sales and Use Tax Regulations provides that charges for diagnostic services are subject to sales tax.

In *Matter of Rochester Gas and Electric Corporation*, Dec St Tx Comm., June 17, 1985, TSB-H-85(84)S, various inspections performed at the petitioner's nuclear plant were determined to be part of the normal activities that related to keeping real property in a condition of fitness, efficiency, readiness or safety. It did not matter whether an actual repair was done, but that the service rendered was an activity which was part of the process of keeping property in a state of readiness and fitness. The inspections at issue accomplished that purpose by keeping the petitioner's officials informed of the condition of the plant so as to assist them in maintaining the plant at its standard level of efficiency and readiness. Therefore, the inspections were properly subject to sales tax as maintaining, servicing or repairing real property within the meaning and intent of section 1105(c)(5) of the Tax Law.

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In the present case, when Petitioner performs the pipeline inspection service, it is considered to be rendering a service that keeps its customer informed of the condition of the pipeline so as to assist the customer in maintaining the pipeline at its standard level of efficiency and readiness. Accordingly, Petitioner's fees are considered to be charges for diagnostic services and are subject to the sales tax imposed under paragraphs (3) and (5) of section 1105(c) of the Tax Law. The fact that Petitioner furnishes the results of the pipeline inspection service in a written report to its customer does not preclude Petitioner's charges for the pipeline inspection service from being subject to the taxes imposed under section 1105(c)(3), (5). It is noted that inspection services which are mandated by a governmental entity to demonstrate compliance with governmental codes are not subject to sales tax. See *Elevator Service Companies*, Adv Op Comm T & F, October 7, 1996, TSB-A-96(67)S; *Hall & Dettor, LLP, Certified Public Accountants*, Adv Op Comm T & F, November 30, 1999, TSB-A-99(53)S; *Elevator Service Companies*, Adv Op Comm T & F, April 15, 2005, TSB-A-05(11)S.

Petitioner's service performed with respect to pipelines located in New York State are taxable. Petitioner's charges for that portion of its service performed with respect to pipelines located outside of New York State are not subject to New York State or local sales tax. Petitioner must allocate its charges to its customer if its service is provided with respect to pipelines located both in and outside of New York. The customer's billing location and the location where Petitioner performs the analysis of information obtained by the smart pig is immaterial in determining the taxability of the inspection services provided by Petitioner.

DATED: June 1, 2005

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