

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-11(21)S
Sales Tax
July 15, 2011

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S110411A

The Department of Taxation and Finance received a petition for Advisory Opinion from [REDACTED]. Petitioner asks whether it is required to charge and collect sales taxes on the security services it provides to a construction company providing construction services to the New York City Department of Transportation. We conclude that it is required to charge and collect sales tax on those security services.

Facts

Petitioner is licensed by the State of New York as a private investigator and provides security guard services to both government and nongovernment entities. Petitioner has a contract with [REDACTED] a construction company, as a subcontractor to provide security guard services on several projects where [REDACTED] is the primary contractor with the New York City Department of Transportation to perform all labor and furnish all materials and equipment for the rehabilitation of the Brooklyn Bridge. [REDACTED] will be referred to as the primary contractor in this advisory opinion. The Petitioner's contract with the primary contractor specifies that sales tax would be charged. The primary contractor did not provide Petitioner with any exemption certificates. Petitioner asks whether it is required to charge and collect sales tax from the primary contractor for those security guard services.

Analysis

Section 1105(c)(8) imposes sales tax on the provision of

“[p]rotective and detective services, including, but not limited to, all services provided by or through alarm or protective systems of every nature, including, but not limited to, protection against burglary, theft, fire, water damage or any malfunction of industrial processes or any other malfunction of or damage to property or injury to persons, detective agencies, armored car services and guard, patrol and watchman services of every nature other than the performance of such services by a port watchman licensed by the waterfront commission of New York harbor, whether or not tangible personal property is transferred in conjunction therewith.”

The state and local sales tax on protective and detective services was enacted in 1990. Prior to the enactment of section 1105(c)(8), New York City imposed sales tax on those same services (Administrative Code of City of New York, § 11-2040[a][2]). The New York City sales tax was at issue in the Tax Appeals Tribunal decision in Matter of MGK Constructors (TSB-D-92(23)S, March 5, 1992).

The facts in that decision are similar to the facts in this petition. MGK Constructors (MGK) had a contract with the New York City Department of Environmental Protection, for the building of part of a tunnel under the East River. Under that contract, MGK was required to provide security guard services. It subcontracted for those security guard services with another firm. The Tribunal concluded that the provision of the guard services constituted taxable services. The exemption enjoyed by the City of New York as a governmental entity did not extend to MGK because the City was not the direct purchaser of those services. The services were purchased by MGK and were essentially “one of many expense items which were necessary to satisfy the contractual obligation of constructing a water tunnel”. The Tribunal further decided that MGK was not purchasing the protective services for resale to the New York City Department of Environmental Protection, finding that the services were in the nature of an item of overhead, rather than a purchase for resale.

Like MGK, the primary contractor has a contract with a department of the City of New York to provide construction services. Also, like MGK, the primary contractor has contracted with a company, in this instance, the Petitioner, for the provision of protective services. As the Tribunal concluded in Matter of MGK Constructors, those protective services are subject to sales tax and Petitioner is liable for charging and collecting those taxes.

DATED: July 15, 2011

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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.