

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether its tree consulting service is subject to New York State sales and use tax.

We conclude that Petitioner’s fee for its tree consulting services is subject to tax unless it is performed solely as part of a capital improvement.

Facts

Petitioner provides tree consulting services to its customers.¹ Petitioner inventories the trees and shrubs located on a customer’s property, and documents the species, condition and health, location, size, tree risk, existing or potential pests/diseases, and value of each tree or shrub inventoried. Petitioner also provides its customers with a comprehensive report of their property, that covers the general health of the trees and shrubs, and also potential issues with current trees, and potential locations and suitable species for new plantings. Petitioner states that its tree consulting service is provided separately from the maintenance and installation of trees and shrubs. Once the consulting service is completed, the consultant recommends a maintenance and/or installation program that supports the property.

Analysis

Tax Law § 1105(c) imposes tax upon the receipts from every sale, except for resale, of specific services. Pursuant to Tax Law § 1105(c)(5), sales tax is imposed on services of maintaining, servicing or repairing real property. “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.” 20 NYCRR 527.7(a)(1). Inspections are diagnostic services for the keeping of real property in a condition of fitness, efficiency, readiness and safety. See TSB-A-93(49)S.

Whether sales tax is imposed on services performed on real property depends on the end result of the service. See 20 NYCRR 527.7(b)(4). A service is taxable where the end result of the service is the repair or maintenance of real property. However, a service is not taxable where the result is a capital improvement to the real property. See *Id.*; Tax Law § 1105(c)(5). A capital improvement is an addition or alteration to real property that: (1)

¹ Petitioner also provides tree and shrub maintenance services in New York and acknowledges that these services are subject to State and local sales taxes. Petitioner did not request an opinion on those services.

substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; (2) becomes part of the real property or is permanently affixed to the real property such that removal would cause material damage to the property or article itself; and (3) is intended to become a permanent installation. Tax Law § 1101(b)(9)(i). Installation and planting of trees or shrubs is a capital improvement. See PUB 862 – *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property*, TB-ST-505 – *Landscapers*.

Here, Petitioner inspects trees and shrubs located on a customer’s property and provides the customer a custom property inspection report of the customer’s trees and shrubs. The custom report contains specific information such as a health analysis of the customer’s trees and shrubs, the location and proximity of the customer’s trees and shrubs and available planting spaces, as well as an estimated value of the customer’s trees and shrubs. Petitioner’s service and the information contained in the custom report allows a property owner to identify maintenance needs on the property, such as removal of damaged or distressed trees and shrubs, the relocation of existing trees and shrubs, or possible planting spaces for new trees and shrubs on the property. Accordingly, the diagnostic services Petitioner performs for the owner of real property constitute the maintenance, servicing or repair of real property and is subject to sales tax under Tax Law § 1105(c)(5). See 20 NYCRR 527.7(a)(1). However, if a real property owner requests Petitioner to perform an inspection as part of a capital improvement, Petitioner’s service would not be taxable. In that instance, Petitioner must timely obtain a copy of a properly completed Form ST-124 - *Certificate of Capital Improvement* from the owner of the real property. See 20 NYCRR 532.4.

DATED: August 2, 2024

/s/

MARY ELLEN LADOUCEUR
Principal Attorney

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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.