

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

TSB-A-85(26)S
Sales Tax
July 8, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S840712A

On July 12, 1984, a Petition for Advisory Opinion was received from the Village of East Aurora, 571 Main Street, East Aurora, New York 14052.

The issue raised is whether "user charges" billed by the Village of East Aurora for sewage treatment services are subject to the sales tax.

Petitioner currently owns and maintains a wastewater treatment plant. Petitioner has contracted with a private firm to assume the responsibility for operation of this facility as well as for the construction and operation of a new sewage treatment plant. Pursuant to the agreement between the parties, the private firm will bill Petitioner for operation and maintenance costs in connection with its operation of these plants; the Village in turn will bill the individual users a user charge. Petitioner states that its authorization to impose this user charge is found in section 450-454 of the General Municipal Law which refers to this charge as sewer rent.

Section 1116(a)(1) of the Tax Law provides that any sales by the State of New York or any of its agencies, instrumentalities, public corporations or political subdivisions shall not be subject to the sales and compensating use tax where it is the purchaser, user or consumer or where it is a vendor of services or property of a kind not ordinarily sold by private persons.

Petitioner is an instrumentality of the State of New York, and as such is not liable for the collection of sales tax on the sale of any service which is not ordinarily offered for sale by private persons.

While waste treatment services may sometimes be sold by private persons, they are not ordinarily sold by private persons within the meaning and intent of section 1116(a)(1) of the Tax Law. (Opinion of Counsel, New York State Tax Bulletin 1965-3). Accordingly, Petitioner is not required to collect sales tax on its charge to property owners for sewer rent. The fact that petitioner initially purchases waste treatment services from a private company does not alter its exempt status.

DATED: June 10, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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