

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

TSB-A-86(6)S
Sales Tax
January 17, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S850930B

On September 30, 1985, a Petition for Advisory Opinion was received from Syracuse Suburban Gas Company, Inc., 207 North Center Street, East Syracuse, New York 13057.

The issues raised are whether Petitioner is required to collect New York State sales tax on charges to its customers for new installations of natural gas service, and whether sales tax is due on material, equipment or labor used by Petitioner in performing the installation.

Petitioner, a natural gas public utility, installs new gas service by running pipes and fittings in the ground from its main pipe line to the customer's building. Petitioner reserves title to all property incorporated in the new connection and also maintains and services the lines and equipment during and after construction.

The customer contributes to the cost of the installation by paying Petitioner a fee called an "aid to construction". Petitioner charges sales tax on this fee, a practice questioned by many of its customers who consider the new connection a capital improvement to real property, and therefore exempt from sales tax. Petitioner takes the position that it has not performed a capital improvement, because it has not transferred title to the pipeline and fittings to the customer.

The Tax Commission and the Tax Department have held the laying of new gas service transmission lines a capital improvement to real property. (See: Brooklyn Union Gas Company, State Tax Commission Advisory Opinion, April 23, 1985, TSB-A-85[7]S; Department of Taxation and Finance, Utilities - Problem Areas and Determinations, April 14, 1978, TSB-M-78[4]S.) This holding, however, is not material in determining the taxability of the installation charges at issue, in the light of special provisions contained in the Tax Law.

Subdivision (c) paragraph (3) of Section 1105 states, in relevant part, that sales tax is imposed on the services of "installing tangible personal property, whether or not property is transferred in conjunction therewith". The same paragraph then enumerates certain specific services excluded from tax, and concludes as follows: "Provided, however, that nothing contained in this paragraph three shall be construed to exclude from tax under this paragraph or under subdivision (b) of this section any charge, made by a person furnishing service subject to tax under subdivision (b) of this section, for installing property at the premises of a purchaser of such a taxable service for use in connection with such service." Section 1105(b) of the Tax Law imposes a sales tax on the receipts from every sale, other than sales for resale, of gas, and gas service of whatever nature.

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Accordingly, Petitioner must collect the applicable State and local sales tax on any amount billed to customers for installation of gas service.

No sales tax liability will accrue to Petitioner from the use of employee construction labor. If Petitioner hires outside labor for the installation, it will be purchasing a service "for resale" within the meaning and intent of the above quoted Section 1105(b) of the Tax Law. To avail itself of the tax exemption, Petitioner must present its supplier with a properly completed Form ST-120 (Resale Certificate).

Additionally, as the end user of all piping, fittings and instrumentation incorporated in the real property, Petitioner is required to pay sales or use taxes on its purchases of such material at the rate in effect in the locality where the new connection is put in service. Petitioner's purchases, for its own use, of construction equipment, tools and supplies are also subject to tax.

Furthermore, where one of various "exempt organizations" enumerated in Section 1116(a) of the Tax Law is both the purchaser and the consumer of Petitioner's services, such organization is not required to pay tax on the installation charges, if it has furnished Petitioner with a completed Exempt Organization Certificate (Form ST-119.1).

In that event, however, Petitioner is not relieved of the obligation to pay sales tax on its purchases of any property installed on the premises of the exempt organization, if ownership of such property is retained by the Petitioner. For additional information on exempt organization certification, Petitioner should refer to Taxpayer Services Bureau Memorandum TSB-M-80(2)S.

DATED: January 17, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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