

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

TSB-A-87(27)S
Sales Tax
August 31, 1987

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S870602C

On June 2, 1987, a Petition for Advisory Opinion was received from Consolidated Edison Company of New York Inc. - 4 Irving Place, Room 208, New York, New York 10003.

The issue raised is whether Petitioner's sale of service to public assistance customers, ultimately paid for by a social service agency, constitutes a sale to an exempt organization under Tax Law Section 1116(a)(1) for the purpose of the sales and use tax imposed under Articles 28 and 29 of the Tax Law.

Petitioner, is a public utility corporation organized under the laws of New York State. Petitioner is engaged in the manufacture, distribution, and sale of electricity and steam. It is also involved in the distribution and sale of gas throughout various portions of the City of New York and County of Westchester.

Some of the customers served by Petitioner are recipients of public assistance whose bills are paid for by either the New York City Human Resources Administration (HRA) or the Westchester County Department of Social Services (DSS). Pursuant to Chapter 189, Laws of 1965, effective May 17, 1965, when a customer first qualifies for assistance he receives a utility guarantee from either HRA or DSS and a check covering up to four months of arrears. Thereafter, the customer continues to receive monthly bills from Petitioner, which include a sales tax. If a customer is unable to pay his monthly bill during the period he is in receipt of public assistance, HRA or DSS will pay such bill.

In addition to the monthly bill sent directly to the customer, Petitioner sends HRA a computer tape with the billing information accompanied by a printed summary of the computer tape. Based on this information, HRA pays Petitioner the outstanding balances due for the services provided to its public assistance recipients - including the applicable sales tax.

DSS follows a similar procedure except that Petitioner does not send a computer tape to DSS. Instead, Petitioner sends DSS either a printed document containing billing information, or in some instances, the customer's actual bill. Based on this information, DSS pays Petitioner the outstanding balances due including the appropriate sales tax.

Section 1105(b) of the Tax Law imposes a sales tax on "the receipts from every sale, other than sales for resale, of gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature..." The intention of the statute is to tax the...sales and services whether or not rendered by a company subject to regulation as a utility company. (20 NYCRR 527.2(2)).

Section 1107 of the Tax Law imposes within the City of New York a local sales tax upon, among other things, the utility services subject to tax under section 1105(b) of the Tax Law. Similarly, section 1210 of the Tax Law authorizes counties of the state to impose sales tax upon, among other things, the utility services subject to tax under section 1105(b) of the Tax Law. Westchester County has imposed such a tax.

Section 1105-A of the Tax Law exempts from the tax imposed under section 1105(b) of the Tax Law utilities consumed for residential purposes. Such exemption does not apply to the tax imposed under section 1107 of the Tax Law. Similarly, residential utilities continue to be subject to Westchester County local sales tax.

Accordingly, it should be noted that residential utilities such as those sold by Petitioner are generally exempt from New York State sales tax but subject to New York City and Westchester County sales tax at various local rates.

Additionally, section 1116 of the Tax Law states that certain organizations will be exempt from the imposition of the sales and use tax, including the local sales taxes here at issue. Section 1116(a)(1) exempts: (1) The State of New York, or any of its agencies, instrumentalities, public corporations or political subdivisions 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.

Chapter 619, of the Laws of 1940 created the Social Services Law. The HRA and DSS were created pursuant to the authority given to the Commissioner of Social Services. (Social Services Law §17). Agencies and instrumentalities of the State as used in section 1116 means any authority, commission or independent board created by an act of the Legislature for a public purpose. (20 NYCRR 529.2(a)(1)). Accordingly, HRA and DSS are such agencies and instrumentalities exempt from the sales and use tax by section 1116(a)(1).

In order for a sale such as the sales here at issue to qualify for the exemption contained in section 1116(a)(1) of the Tax Law, it must have all three of the following elements:

- (1) An order for goods or services must be placed by the Social Services Agency; and
- (2) The bill for the goods or services *must* be prepared in the name of the Social Services Agency; and
- (3) Payment for the goods or services must be made by the Social Services Agency.

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The following illustration demonstrates how goods are sold to persons receiving public assistance. The principles are equally applicable to all sales of goods and services sold to persons receiving public assistance. (Technical Services Bureau Memorandum, Application of New York State and Local Sales Tax to Goods and Services Sold to Persons Receiving Public Assistance, July 20, 1978, TSB-M-78(14)(S)).

Transaction:

Jones Fuel Co. agrees to sell Mr. Smith 100 gallons of fuel oil. The fuel oil is delivered and Mr. Smith is billed. Shortly thereafter Mr. Smith applies for assistance from the County Social Services Department. The County pays Jones Fuel Co. for the fuel oil sold to Mr. Smith.

Determination:

Jones Fuel Company's sale is to Mr. Smith who ordered and was billed for the fuel even though the County Social Services Department paid for it. New York Sales and Use Tax Law, section 1105, imposes sales tax on tangible personal property, utility services and other select services. Consequently, Jones Fuel Company is required to collect the appropriate sales tax on this sale and remit it to the State Tax Commission.

The sales here at issue were ordered by and billed to individuals (public assistance recipients) and not to the State, its agencies, instrumentalities, public corporations or political subdivisions. Accordingly, such sales are not exempt from the tax. Petitioner is required to collect and remit the appropriate sales tax on sales to such public assistance recipients.

For additional information regarding the application of New York State and Local Sales Tax to goods and services sold to persons receiving public assistance, see TSB-M-78(14)S and TSB-A-85(26)S.

DATED: August 31, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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