

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

TSB-A-88(12)S
Sales Tax
January 25, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S870924A

On September 24, 1987, a Petition for Advisory Opinion was received from 110 Sand Company, 170 Cabot Street, West Babylon, New York 11704.

The issue raised is the taxability of the service of removal of water from Petitioner's landfill.

Petitioner mines sand and gravel for sale to its customers. In addition, Petitioner operates a landfill accepting clean fill including demolition debris. Petitioner states that the New York State Department of Environmental Conservation has required it to install two 60 mill liners beneath its landfill. These liners accumulate water which must be removed. Petitioner hires a company to pump this water out of its landfill and remove it to another landfill. The charge for this removal service is the subject of Petitioner's inquiry.

Section 1105(c) of the Tax Law imposes tax upon receipts from the sale, except for resale, of the following services:

* * *

(5) Maintaining, servicing or repairing real property, property or land, as such terms are defined in the real property tax law, whether the services are performed in or outside of a building, as distinguished from adding to or improving such real property, property or land, by a capital improvement as such term capital improvement is defined in paragraph nine, of subdivision (b) of section eleven hundred one of this chapter

Section 527.7(b)(4) of the sales and use tax regulations provides:

The imposition of tax on services performed on real property depends on the end result of such service. If the end result of the services is the repair or maintenance of real property, such services are taxable. If the end result of the same service is a capital improvement to the real property, such services are not taxable. 20 NYCRR 527.7.

Section 527.7(a)(1) of the regulations provides that the terms "[m]aintaining, 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."

Section 527.7(a)(3) provides that:

A capital improvement is an addition or alteration to real property:

- (i) which substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property;
- (ii) which becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and
- (iii) is intended to become a permanent installation.

The end result of the service here at issue is obviously the servicing or maintenance of real property rather than a capital improvement since the service relates to keeping real property in a condition of fitness, efficiency, readiness or safety. Accordingly such services are subject to tax.

DATED: January 25, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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