

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

TSB-A-88(24)S
Sales Tax
April 7, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S880107A

On January 7, 1988, a Petition for Advisory Opinion was received from Video Systems Service, P.O. Box 296, Henrietta, N.Y., 14467.

The issue raised is whether video equipment repair services performed for a retailer of such equipment by a person other than an employee is subject to sales tax.

Petitioner has established, at his own expense, service departments in various video equipment stores. Petitioner, acting as the subcontractor of a retailer of video equipment, performs repair services on video equipment owned by the retailer's customers. Petitioner bills the retailer for labor and parts plus markup. The retailer, after adding a profit margin, bills the customer and collects sales tax on the entire repair charge.

The Tax Law §1105[c][3] imposes tax on the services of maintaining and repairing tangible personal property whether or not any tangible personal property is transferred in conjunction therewith.

The Sales and Use Tax Regulations provide that the services of maintaining, servicing or repairing tangible personal property are not taxable if performed for resale as such or performed on property held for sale in the regular course of business. 20 NYCRR 527.5(b)(1) and (2).

Accordingly, Petitioner is not responsible for the collection of sales tax on his repair charges to a retailer as described above as long as the retailer has supplied a properly completed Resale Certificate (Form ST-120). Petitioner may accept a blanket Resale Certificate from retailers making repeated purchases of the same kind of service. See 20 NYCRR 532.4(b)(3), (d)(4).

Furthermore, Petitioner is not required to collect sales tax on his repair charges to a retailer for repair services performed on video equipment owned by the retailer and held by such retailer for sale in the regular course of business as long as the retailer has supplied a properly completed Resale Certificate.

It is to be noted that repairs by Petitioner of equipment owned by a retailer but not held for sale in the regular course of its business do not qualify for the resale exemption. However, whenever a retailer claims tax exemption for a repair charge by presenting Petitioner with a properly completed Resale Certificate not later than ninety days after rendition of the repair service, the burden of proving non-taxability rests solely with the retailer. 20 NYCRR 532.4(b)(3).

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Moreover, Petitioner may itself claim exemption by use of a Resale Certificate when purchasing replacement parts which, as components of video equipment, are actually transferred to the purchaser of the repair service. Tax Law §1101(b)(4)(i); 20 NYCRR 527.5(c) and (d).

DATED: April 7, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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