

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

TSB-A-88(26)S
Sales Tax
May 11, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S870908B

On September 8, 1987, a Petition for Advisory Opinion was received from Shaban & Son, Inc., P.O. Box 567, Sparta, N.J., 07871.

The issue raised is whether the cleaning and maintenance services provided by the Petitioner qualify for exclusion from the imposition of sales tax pursuant to Tax Law §1105(c)(5).

Petitioner cleans odor and grease exhaust systems in commercial kitchens on a contractual basis. The service agreements, usually extending over a term of one year, schedule service calls at regular intervals ranging from twice weekly to once every three months.

During every service call, air filters are removed, cleaned and replaced; canopies, ducts, fan chambers and fans are cleaned, polished, coated with a preserving agent and sprayed with fire retardant; fans are checked for balance and, if necessary, fire dampers are adjusted.

Petitioner's employees do not tighten or replace fan belts nor are they obligated to check the electrical parts of the exhaust system; however, they will report to the building engineer any problems encountered while cleaning.

Section 1105(c)(3) of the Tax Law imposes tax on the receipts from servicing or repairing tangible personal property. Section 1105(c)(5) of the Tax Law imposes tax on every sale of the services of 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 - but excludes from taxation interior cleaning and maintenance services performed on a regular contractual basis for a term of not less than thirty days.

It has been determined that built-in kitchen exhaust fans and ducted hoods, upon installation, become part of the building and therefore capital improvements to real property. See Department of Taxation and Finance Publication 862 (2/81), Classifications of Improvements and Repairs to Real Property for Sales Tax Purposes, at p. 13. Petitioner's business activities, therefore, come under the purview of Tax Law § 1105(c)(5).

The phrase "interior cleaning and maintenance" has been construed to mean ordinary janitorial services such as dusting, cleaning and waxing the floors and walls of a building, oiling door hinges, replacing light bulbs and simple repairs such as the replacement of washers. 20 NYCRR 527.7(c)(3)(iv); Opinion of Council, 1965 NYTB-3, p. 29.

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The services at issue, although performed on a regular contractual basis, are not the general janitorial building cleaning and maintenance services intended for exclusion from sales tax by the statute. However routine, they are equipment maintenance tasks of a specialized nature which are subject to state and local sales taxes in accordance with the above quoted sections of the Tax Law and the Regulations of the Commissioner of Taxation and Finance. See also Matter of J.C. Penney Co., Decision of the State Tax Commission, October 17, 1980, TSB-H-80(230)S.

It should be noted, however, that in accordance with Tax Law § 1101(b)(4)(i) Petitioner is not required to pay tax on purchases of property transferred to the customer in the performance of its services. This exemption, for instance, would apply to waxes (but not cleaners), preserving agents, fire retardant, tape and sealers; it may be claimed by issuing a Resale Certificate (Form ST-120), no later than 90 days after the purchase, to the vendor of the exempt supplies.

DATED: May 11, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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