

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

TSB-A-93 (19)S
Sales Tax
March 22, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S921008A

On October 8, 1992, a Petition for Advisory Opinion was received from J & L Environmental Services, Inc., 542 Union Avenue, New Windsor, New York 12553.

The issue raised by Petitioner, J & L Environmental Services, Inc., is whether the charges for the services provided by its field staff professionals on a temporary basis through its "Rent-A-Tech Program" to prime contractors in need of field staff are subject to New York State and local sales and use taxes.

The Rent-A-Tech Program staff are full-time, salaried employees of Petitioner. When a prime contractor has a need of the Rent-A-Tech services, they call Petitioner's office with a request. Petitioner will provide the field tech to the client and bill the client for those services based on an hourly rate. The Rent-A-Tech staff member receives his regular salary which is independent of the agreements between Petitioner and its clients.

Petitioner's clients are engineering and environmental consulting firms that perform environmental field work as part of their scope of work as the primary contractors for projects. These projects result from contracts between these firms and municipalities, government regulatory agencies such as the New York State Department of Environmental Conservation and the United States Environmental Protection Agency, or private industrial or corporate clients requiring environmental field work. Petitioner does not act in the capacity of a primary contractor with the Rent-A-Tech Program.

Petitioner's field techs are available to provide professional field assistance in areas such as Environmental Auditing (i.e., site visits and assessments, real estate acquisitions and transfers and report preparation assistance); Remedial Investigations (i.e., site delineation, soil and groundwater sampling, sample field screening, site cleanup and site supervision); and Hazardous Waste Sites (i.e., health and safety trained and certified, regulatory agency coordination, oversight supervision and field documentation).

Petitioner's charges a portal-to-portal fee of \$65.00 per hour for field technicians for one day or any part thereof. Reduced hourly rates are available for multiple days and full week project assignments. Clients will receive copies of the field log, chains of custody, manifests and other field forms related to the project at no additional cost. Project-related expenses such as (but not limited to) sampling equipment, travel, report preparation field instruments, photo documentation, etc. will be billed to the client at Petitioner's cost, plus 15%.

Section 1105 of the Tax Law states, in part:

Imposition of sales tax.-- ... there is hereby imposed and there shall be paid a tax ... upon:

* * *

(c) The receipts from every 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, but excluding services rendered by an individual who is not in a regular trade or business offering his services to the public. (emphasis added)

Taxability of Services Provided By Temporary Service Contractors, TSB-M-87(13)S, issued by the Department of Taxation and Finance states, in part, that:

Section 1105(c) of the Tax Law imposes a tax on certain services. (A partial list of taxable and nontaxable services is included in this memorandum.) When a temporary service contractor provides personnel to perform such taxable services for its client, the fee paid by the client for these services constitutes a receipt subject to tax. Accordingly, the temporary service contractor is required to collect sales tax on the fee charged to the client for such taxable services, regardless of how the charge is arrived at or how much the contractor is required to pay its personnel.

* * *

Where the taxable service performed by the individual supplied by the temporary service contractor to the client is purchased by the client for resale, or results in a capital improvement to real property, such service is not subject to tax under section 1105(c) of the Tax Law. The temporary service contractor will not be required to collect a sales tax on the fee charged to the client if a properly completed exemption certificate is provided by the client within 90 days of the date of the services were performed ...

* * *

TSB-A-93 (19)S
Sales Tax
March 22, 1993

Example 4. X Company contracts with a customer to repaint the customer's office building. XYZ, a temporary service contractor, is requested by X Company to furnish X Company with painters to assist in performance of the contract. Since the services being furnished by XYZ are for resale by X Company, such services are not subject to tax under Section 1105(c) of the Tax Law, provided that a timely and properly completed Contractor Exempt Purchase Certificate, Form ST-120.1, is furnished to XYZ by X Company. (emphasis added)

Accordingly, pursuant to Section 1105(c) of the Tax Law and TSB-M-87(13)S, supra, where the services of the temporary field staff professionals provided by Petitioner to the prime contractor are purchased by the prime contractors for resale, or in connection with the performance of a capital improvement, the charges for such services are not subject to sales tax under Section 1105(c) of the Tax Law. A timely and properly completed Contractor Exempt Purchase Certificate, Form ST-120.1, should be furnished to Petitioner by the prime contractor.

DATED: March 22, 1993

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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