

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

TSB-A-94 (21)S
Sales Tax
April 27, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S921125B

On November 25, 1992 a Petition for Advisory Opinion was received from Mark S. Klein, Partner, Hodgson, Russ, Andrews, Woods & Goodyear, 1800 One M & T Plaza, Buffalo, N.Y. 14203.

The issue raised by Petitioner, Mark S. Klein, is whether fees paid for zebra mussel monitoring services and the resulting written test reports are subject to State and local sales tax.

Petitioner represents X, a company that monitors the existence, growth, density, and settling of zebra mussels in water that is drawn from natural bodies of water and used by X's customers. X analyzes water samples drawn from locations on a customer's premises and then provides the customer with a written report documenting the findings of such analyses.

X periodically (e.g., weekly) collects water samples from a customer's water system. The samples are filtered and concentrated on site. The concentrated samples are then conveyed to a laboratory where they are analyzed under magnification to determine the density, live-dead ratio and life stage densities of zebra mussel veligers. A "veliger" is the larval stage of a mussel or other mollusk.

For some customers, X also monitors adult zebra mussels by putting specially designed PVC racks into the customer's water system. X periodically (e.g., monthly) removes the racks and transports them to a laboratory where the adult mussels adhering to the racks are counted and measured. The racks are then returned to their original sites.

X analyzes the raw data it obtains and calculates settling rates, growth rates, and mortality rates. X incorporates these calculations, along with the raw data, into written reports which it prepares for its customers on a periodic basis (e.g., monthly). The reports include brief summaries and numerous tables and graphs.

A customer's report pertains only to the analysis of water samples taken from that customer's premises and is uniquely individual to that customer. In addition, the information in X's reports is not incorporated in reports furnished to other persons.

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

- (1) The furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and

furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons....

(3) Installing tangible personal property, ... or maintaining, servicing or repairing tangible personal property, ... not held for sale in the regular course of business, whether or not the services are performed directly ... or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith,

(5) Maintaining, servicing or repairing real property, property or land, ... whether the services are performed in or outside of a building

Section 527.3 of the New York State Sales and Use Tax Regulations states, in part:

Sale of information services. (Tax Law, § 1105(c)[1])

(a) Imposition. (1) Section 1105(c) of the Tax Law imposes a tax on the receipts from the service of furnishing information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any manner such as by tapes, discs, electronic readouts or displays.

(2) The collecting, compiling or analyzing information of any kind or nature and the furnishing reports thereof to other persons is an information service.

Section 527.5 of the Regulations states, in part:

Installing, repairing, servicing and maintaining tangible personal property. [Tax Law, §1105(c)(3)]

(a) Imposition. (1) The tax is imposed on the receipts from every sale of the services of installing, maintaining, servicing or repairing tangible personal property, by any means including coin-operated machines, whether or not any tangible personal property is transferred in conjunction with the services.

(3) Maintaining, servicing and repairing are terms used to cover all activities that relate to keeping tangible personal property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition.

Example 6: A company operates a diagnostic service in which it tests an appliance for a set fee, but does not repair the appliance. The charge for the diagnostic service is taxable.

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Section 527.7 of the Sales and Use Tax Regulations states, in part:

Maintaining, servicing or repairing real property. [Tax Law, § 1105(c)(5)]

(a) Definitions. (1) Maintaining, 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....

In the Matter of the Petition of Rochester Gas and Electric Corporation, Dec St Tx Comm., June 17, 1985, TSB-H-85(84)S, various inspections performed at petitioner's nuclear plant were determined to be part of the normal activities that related to keeping real property in a condition of fitness, efficiency, readiness or safety. It did not matter that an actual repair was or was not done, but that the service rendered was an activity which was part of the process of keeping property in a state of readiness and fitness. The inspections in issue accomplished that service by keeping petitioner's officials informed of the condition of the plant so as to assist them in maintaining the plant at its standard level of efficiency and readiness. Therefore, the inspections were properly subject to tax as the maintaining, servicing or repairing of real property within the meaning and intent of Section 1105(c)(5) of the Tax Law and Section 527.7(a)(1) of the Sales and Use Tax Regulations.

In the instant matter, when X performs the zebra mussel monitoring service, X is considered to be rendering a service that keeps X's customers informed of the condition of the water so as to assist them in maintaining the water quality at its standard level of efficiency and readiness. Accordingly, X's fees are considered to be charges for diagnostic services and are subject to the tax imposed under Section 1105(c)(3) and (5) of the Tax Law and Section 527.5 of the Sales and Use Tax Regulations. The fact that X furnishes the results of the monitoring in the form of a written report to the customer and the fact that such report is considered to be personal and individual in nature does not preclude X's charges for the zebra mussel monitoring service from being subject to the tax imposed under Section 1105(c)(3) and (5) of the Tax Law and Section 527.5 of the Sales and Use Tax Regulations.

DATED: April 27, 1994

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

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