

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

TSB-A-94 (36)S  
Sales Tax  
September 2, 1994

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940502A

On May 2, 1994, a Petition for Advisory Opinion was received from the Circle Line-Statue of Liberty Ferry, Inc., 17 Battery Place, Suite 715, New York, New York 10004.

The issues raised by Petitioner, Circle Line-Statue of Liberty Ferry, Inc., are whether it is liable for sales and use tax when it purchases goods and services in order to repair and maintain property owned by the United States government or by the City of New York and whether it is liable for sales or use tax when it purchases goods and services used for capital improvement projects as directed by the National Park Service.

Petitioner was incorporated under the laws of the State of New York for the purpose of providing transportation and related facilities and services for the public at the Statue of Liberty Monument (Liberty and Ellis islands) under concession contracts with the U.S. Department of the Interior (National Park Service).

Under the concession contract with the National Park Service, Petitioner is required to physically maintain and repair all facilities (both government and concessioner improvements, and including the Ellis Island bulkhead and Liberty Island pier and bulkhead) used in the operation under the contract with the National Park Service.

Under the license agreement with New York City, Petitioner at its sole cost and expense is required to put, keep, and preserve in good order the licensed premises consisting of landing slips numbered 3, 4 and 5, and adjacent walkways located in Battery Park. The petitioner must also maintain and repair the licensed premises, including but not limited to repair and replacement of damaged piles, wales and chocks.

Under the agreement with the National Park Service, as partial consideration for privileges granted under the contract, the petitioner established a "capital account" by which it undertakes, on a project basis, improvements which directly support its operations under the contract. Petitioner has no ownership or other interest in improvements made from the capital accounts fund.

Petitioner is not granted a leasehold interest, possessory interest, or other ownership right to any government facilities, improvements, or other properties, the use of which is granted to petitioner under the terms of its contracts or agreements with the National Park Service or New York City.

Petitioner's contract with the National Park Service provides the following:

Sec. 5. MAINTENANCE. Subject to section 4(e) hereof, the concessioner will physically maintain and repair all facilities (both government and concessioner improvements, and including the Ellis Island bulkhead and Liberty Island pier and bulkhead) used in the operation hereunder, including maintenance of assigned lands and all necessary housekeeping activities associated with the operation to the satisfaction of the Secretary. In order that a high standard of physical appearance, operations, repair and maintenance be maintained, appropriate inspections will be carried out jointly by the Secretary and the Concessioner.

Sec. 6. CONCESSIONER'S IMPROVEMENTS. (a) "CONCESSIONER IMPROVEMENTS," as used herein, means buildings, structures, fixtures, equipment, and other improvements affixed to or resting upon the lands assigned hereunder in such manner as to be part of the realty, provided by the Concessioner for the purposes of this contract (excluding improvements made to GOVERNMENT IMPROVEMENTS by the Concessioner), as follows: (1) such improvements upon the lands assigned at the date hereof as described in Exhibit "D" hereto, and (2) all such improvements hereafter constructed upon or affixed to the lands assigned to the Concessioner with the written consent of the Secretary. CONCESSIONER IMPROVEMENTS do not include any interest in the land upon which the described structures are located.

(b) The concessioner shall have a possessory interest in all CONCESSIONER IMPROVEMENTS recognized by this contract. Possessory interest shall consist of all incidents of ownership except legal title, which shall be vested in the United States. However, such possessory interest shall not be construed to include or imply any authority, privilege or right to operate or engage in any business or other activity and the use or enjoyment of any structure, fixture, or improvement in which the concessioner has a possessory interest shall be wholly subject to the applicable provisions of this contract and to the laws and regulations relating to the area. The said possessory interest shall not be extinguished by the expiration or other termination of this contract,\* \* \* \*

Petitioner's contract with New York City provides the following:

7.0 During the term of this License, Licensee at its sole cost and expense and to the reasonable satisfaction of the Commissioner, shall put, keep, repair, preserve in good order Licensed Premises, as defined in Article II herein. Licensee shall at all times keep Licensed Premises clean, litter free, and neat. Licensee shall provide regular cleaning and maintenance services for Licensed Premises.

7.1 During the term of this License, Licensee shall maintain and repair the Licensed Premises in accordance with the standards set forth in this Agreement, including but

not limited to repair and replacement of damaged piles, wales and chocks. All such maintenance and repair shall be performed by Licensee in a good and workmanlike manner. To secure Licensee's obligation to maintain and repair the Licensed Premises Licensee shall provide Parks with a Security Deposit as provided for in Article VI of the General Provisions, annexed hereto as Exhibit A.

Section 1105(a) of the Tax Law imposes a tax on "[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1115(a) of the Tax Law exempts from the sales tax imposed under §1105(a) of the Tax Law and from the compensating use tax imposed under §1110:

\* \* \*

(15) Tangible personal property sold to a contractor, subcontractor or repairman for use in erecting a structure or building of an organization described in subdivision (a) of section eleven hundred sixteen, or adding to, altering or improving real property, property or land of such an organization as the terms real property, property or land are defined in the real property tax law; provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property.

(16) Tangible personal property sold to a contractor, subcontractor or repairman for use in maintaining, servicing or repairing real property, property or land of an organization described in subdivision (a) of section eleven hundred sixteen, as the terms real property, property or land are defined in the real property tax law; provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property.

Section 1116(a)(1) of the Tax Law provides an exemption from sales and compensating use taxes with respect to the "State of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer or where it is a vendor of services or property of a kind not ordinarily sold by private persons". Section 1116(a)(2) of the Tax Law provides essentially the same exemption for the United States government and its agencies and instrumentalities.

The City of New York and the National Park Service are exempt organizations as defined in Sections 1116(a)(1) and 1116(a)(2) of the Tax Law.

Accordingly, Petitioner may purchase tax exempt any tangible personal property that will become an integral component part of any structure, building or real property owned by New York City or the National Park Service in accordance with Sections 1115(a)(15) and 1115(a)(16) of the

TSB-A-94 (36)S  
Sales Tax  
September 2, 1994

Tax Law. Any service that will be resold by Petitioner to New York City or to the National Park Service may be purchased exempt from sales tax. It should be noted that any tangible personal property purchased by Petitioner that does not become an integral part of property owned by New York City or the National Park Service will be subject to sales tax under Section 1105(a) of the Tax Law.

DATED: September 2, 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.