

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

TSB-A-98(84)S
Sales Tax
December 2, 1998

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S981006A

On October 6, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Island Recycling Corp., 228 Blydenburg Road, Central Islip, New York, 11779.

The issue raised by Petitioner, Island Recycling Corp., is whether the hauling of nonrecyclable material which is done exclusively from a recycling plant is a service subject to sales tax.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner owns and operates a recycling plant where it accepts construction debris, demolition debris and other types of solid waste materials. Carting and trucking companies pay Petitioner to dispose of their solid waste materials. Petitioner separates the reusable materials such as steel, copper, metals, cardboard, paper and glass. Petitioner then sells such reusable materials to companies that can recycle the materials into new products. The remainder of the solid waste materials (the nonrecyclable trash) is then transported to a landfill by various hauling companies.

Applicable Law and Regulations

Section 1105 of the Tax Law provides in part:

On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent upon:

* * *

(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...

Section 527.7(a) of the Sales and Use Tax Regulations provides, in part:

(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. Among the services included are services on a building itself such as painting; services to the grounds, such as lawn

services, tree removal and spraying; trash and garbage removal and sewerage service and snow removal.

Opinion

Petitioner accepts construction debris, demolition debris, and other solid waste materials and separates such materials into two categories: one, consisting of items of value, e.g., steel, copper, metals, cardboard, paper and glass and the other, nonrecyclable trash. In accordance with Section 1105(c)(5) of the Tax Law and Section 527.7(a) of the Sales and Use Tax Regulations, the service of removal and transportation of the nonrecyclable trash from Petitioner's recycling plant is subject to sales tax as it constitutes a trash and garbage removal service. This conclusion is not altered by the fact that the nonrecyclable trash is hauled from the yard of the recycling plant. Taxable trash removal services may be performed with respect to waste transfer stations or recycling plants, as well as any other real property site. (See Paper Fibres Corporation, Adv Op Comm T&F, May 27, 1997, TSB-A-97(32)S.)

DATED: December 2, 1998

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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