

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-20(12)S
Sales Tax
June 2, 2020

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). Petitioner asks whether receipts from annual inspections of backflow prevention devices are subject to New York State and local sales and use taxes.

We conclude that inspection of backflow prevention devices solely for purposes of mandatory governmental code compliance are not subject to sales tax. However, inspections of those devices that are performed in conjunction with an installation or repair are taxable.

Facts

Certain property owners must install backflow prevention devices to prevent water from flowing back into a drinking water supply. Petitioner operates a business that installs and inspects backflow prevention devices. Petitioner notes that both the New York State Sanitary Code and New York City regulations require regular testing of backflow prevention devices by a certified device tester.

Analysis

New York State and local sales taxes are imposed on receipts from the service of installing tangible personal property, and the services of maintaining, servicing or repairing tangible personal property and real property. *See* Tax Law § 1105(c)(3), (5); TSB-A-13(39)S. The terms “maintaining, servicing and repairing” include “all activities that relate to keeping property in a condition of fitness, efficiency, readiness or safety, or restoring it to such condition.” 20 NYCRR 527.5 (a)(3), 527.7(a)(1). A diagnostic service that tests the function of a piece of equipment is generally considered a taxable maintenance service, even if no repair is performed. 20 NYCRR 527.5(a)(3), Example 6. However, inspections that are government mandated and are performed solely for code compliance and are not related to or performed in conjunction with installing, repairing, maintaining or servicing tangible personal property or real property are not subject to sales tax. *See* TSB-A-17(14)S; TSB-A-05(11)S; TSB-A-96(67)S.

The New York State Sanitary Code requires that backflow prevention devices be inspected by a certified tester “at the time of initial installation, after each repair, and annually thereafter.” 10 NYCRR 5-1.31(a)(3). The Rules of the City of New York have similar requirements. *See* 15 RCNY § 20-04(e)(1). Accordingly, Petitioner’s charges for annual inspections are considered government-mandated inspections for code compliance and will not be subject to sales tax, provided they are not performed in conjunction with the installation or

repair of those devices. However, inspections of backflow prevention devices that are performed at the time of installation or repair are subject to sales tax because they are related to or performed in conjunction with taxable installation and maintenance services, even though they are performed pursuant to government regulations. In addition, Petitioner's receipts from installation, repair and maintenance services are subject to sales tax, regardless of whether they are required by State or local law or regulation.

DATED: June 2, 2020

/S/

DEBORAH LIEBMAN
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.