

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. S181005A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether the services it provides construction sites for its site safety managers, fire safety manager, and emergency watchman services are subject to New York State and local sales and use tax under Articles 28 and 29 of the Tax Law. We conclude that the Petitioner’s services are subject to sales tax as protective services under Tax Law § 1105(c)(8).

Facts

Petitioner is a company that is engaged by contractors to provide site safety managers, fire safety managers, and emergency action watchmen for work on construction sites. All site safety managers, fire safety managers, and emergency action watchmen are required to immediately notify the New York City Department of Buildings should they observe that certain enumerated construction site emergency or unsafe conditions exist.

Contractors performing construction, alteration, and/or demolition within New York City are obligated to use construction site supervisors to oversee the contractor’s site safety. All construction projects must have a site safety manager present at all times when the site is operational.

A site safety manager continually inspects the construction site and performs inspections relating to safety netting, housekeeping, material storage and removal, sidewalks, warning signs and lights, scaffolds, structural ramps, runways, and platform inspections, as well as material handling and hoisting equipment inspections. Site safety managers must be properly licensed.

In addition, when a site safety manager’s presence is required and the construction site’s fire protection system is non-operational, a fire safety manager must also be present. The fire safety manager must patrol the site areas in which the fire protection system is out of service at least once every hour.

An emergency action watchman is required on a construction site when a building is being constructed or demolished to make recommendations regarding a contractor’s compliance with the City’s Fire Safety and Emergency Action Plans. They maintain fire safety and emergency action log books, conduct building wide fire drills, conduct fire safety refresher training sessions with the contractor’s staff, and conduct building wide emergency action plan drills. Emergency action watchmen must obtain licensing from the New York City Fire Department.

Analysis

Tax Law § 1105(c)(8) imposes sales tax on the receipts for:

Protective and detective services, including but not limited to, all services provided by or through alarm or protective systems of every nature, including, but not limited to, protection against burglary, theft, fire, water, damage or any malfunction of industrial processes or any other malfunction of or damage to property or injury to persons, detective agencies, armored car services and guard, patrol and watchman services of every nature

Site safety managers, fire safety managers, and emergency action watchmen are engaged in services to protect construction sites and construction workers against damage inflicted by fire or unsafe site conditions. These site safety officials regularly patrol and inspect locations on construction sites to ensure protection against fire, damage to property, or injury to persons. If, during the course of their inspections, these site safety officials see an unsafe condition, they are required to notify appropriate officials. These services are within the scope of protective and detective services subject to sales tax under Tax Law § 1105(c)(8).

We have considered Petitioner's argument that the services discussed above should not be taxable because they are a governmentally mandated inspection service. However, Petitioner's services are protective in nature, within the meaning of Tax Law § 1105(b)(8). They are not solely inspection services that are not provided in conjunction with taxable services to tangible personal property or real property under Tax Law § 1105(c)(3) or (5), respectively. *Cf.* TSB-A-96(67)S. Thus, the limited exception for governmentally mandated inspection services from the sales tax imposed under Tax Law § 1105(c)(3) or (5) does not apply.

Accordingly, Petitioner's services are subject to the New York State and local sales and use taxes.

DATED: June 2, 2020

/S/

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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.