



A taxpayer requested a Letter Ruling on the application of the New Jersey Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) to charges for expenses associated with security services.

Facts

The taxpayer provides taxable security services in New Jersey. The taxpayer separately bills clients for expenses incurred with the security service. The expenses include cell phone service bills and fuel for vehicles used as part of that service. All expenses are used in conjunction with providing security services and are separately listed on the invoice issued to the client.

Issue

Whether the taxpayer's separately stated charges for cell phone service bills and fuel for vehicles used as part of the security service provided in conjunction with taxable security services are subject to tax.

Discussion

The New Jersey Sales and Use Tax Act imposes tax on the retail sale of tangible personal property, services and specified digital products unless a valid exemption exists. N.J.S.A. 54:32B-3(a).

"Security guard and patrol services, including bodyguard and personal protection, guard dog, guard, patrol, and security services" are subject to tax as "investigation and security services". N.J.S.A. 54:32B-3(b) (11); N.J.S.A. 54:32B-2(xx).

The definition of "sales price" which is set forth at N.J.S.A. 54:32B-2 states that:

(1) Sales price is the measure subject to Sales Tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(A) The seller's cost of the property sold;

(B) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;...

Conclusion

The taxpayer's separately stated charges for cell phone service bills and fuel for vehicles used as part of the security service provided in conjunction with taxable security services are subject to tax. Cell phone service and fuel for the vehicles are expenses the taxpayer incurs to perform the security service (e.g., an overhead expense of the taxpayer). The charge to the customer for the cell phone service and fuel for the vehicles follows the taxability of the service provided. Thus,

since the taxpayer is providing a taxable security service, charges for cell phone service and fuel for the vehicles are also subject to tax.

Note that in general, a seller may purchase goods and services that will be resold to customers without the payment of tax by issuing a resale certificate to the seller/provider. However, under the above facts, the taxpayer is not reselling the cell phone service and fuel to the customer. Instead, the taxpayer is using the cell phone service and fuel in the performance of the security service. The taxpayer must pay tax on purchases of taxable services to be used in the performance of the security service.

Although charges for fuel are not subject to Sales and Use Tax (N.J.S.A. 54:32B-8.7), the taxpayer must pay tax when purchasing cell phone service from the telecommunications seller. N.J.S.A. 54:32B-3(f). The charge for the cell phone service to the customer becomes part of the receipt for the taxable security service regardless of whether the amount is stated as a pass-through, a mark-up, or as one lump sum charge for the security service.

A Letter Ruling is limited to the facts set forth therein and is binding on the Division of Taxation 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. A Letter Ruling is based on the law, regulations, and Division policies in effect as of the date the Letter Ruling is issued or for the specific time period at issue in the Letter Ruling.