



Chimney Repair and Cleaning Services

LR: LR: 2011-1-SUT – Issued January 19, 2011

Tax: Sales and Use Tax

Taxpayer requested a Letter Ruling regarding the application of the New Jersey Sales and Use Tax Act to chimney repair and cleaning services.

Facts

Taxpayer primarily engages in residential chimney repair and cleaning. Taxpayer mostly provides services for one family residences throughout the State of New Jersey.

Issues

Should Taxpayer charge and collect New Jersey Sales Tax on the following services:

1. Installation of a new metal chimney flue liner to replace an existing damaged masonry chimney;
2. Installation of new metal chimney flue where an original flue did not exist at all;
3. Cleaning and sweeping of chimneys and flues;
4. Rebuilding a damaged masonry chimney;
5. Re-pointing of damaged mortar joints on an existing masonry chimney;
6. Installation of metal chimney cap where one did not exist or an old cap has failed;
7. Installation of new metal flashing or replacing old metal flashing which has failed;
8. Installation of new masonry chimney where one did not exist at all.

Discussion

The Sales and Use Tax Act imposes tax on the services of installing, maintaining, servicing, and repairing tangible personal property. N.J.S.A. 54:32B-3(b)(2). In addition, charges for maintaining, servicing, and repairing real property are subject to tax. N.J.S.A. 54:32B-3(b) (4). Unless the installation of tangible personal property results in an exempt capital improvement to real property, the installation of tangible personal property to real property is also subject to tax. N.J.S.A. 54:32B-3(b) (4). A "capital improvement" occurs when tangible personal property is permanently affixed to real property (land or buildings) and becomes a permanent part of the real property. To qualify as a capital improvement, the installation must increase the capital value of the property or significantly increase the useful life of the property. If the work performed on the real property results in an exempt capital improvement, the installer does not collect Sales Tax on the labor portion of the bill, provided the property owner issues the installer with a properly completed Certificate of Exempt Capital Improvement ([Form ST-8](#)).

The Sales and Use Tax Act provides an exemption from Sales Tax for maintaining, servicing or repairing a residential heating system unit serving not more than three families living independently of each other and doing their cooking on the premises. N.J.S.A. 54:32B-3(b)(4). The same services if performed on a commercial heating system, would be subject to tax.

In addition, please note that although there is an exemption for the repair and maintenance of a residential heating system serving not more than three families who live independently of each

other and do their cooking on the premises, this exemption does not include the purchase of such systems. N.J.S.A. 54:32B-3(b) (4). The contractor is the party responsible for paying sales or use tax on the materials that become a permanent part of the real property. N.J.S.A. 54:32B-2(e) (2). Since Taxpayer is acting as a contractor, taxpayer is the party responsible for paying sales or use tax on such materials.

Conclusions

1. The installation of a new metal chimney flue liner constitutes an exempt capital improvement to real property. Thus, Taxpayer should not charge the property owner Sales Tax on a charge to install the new metal chimney flue liner provided the property owner issues Taxpayer a properly completed Certificate of Exempt Capital Improvement.
2. The installation of a new metal chimney flue where an original flue did not exist, constitutes an exempt capital improvement to real property. Thus, Taxpayer should not charge the property owner Sales Tax on a charge to install the new metal chimney flue provided the property owner issues Taxpayer a properly completed Certificate of Exempt Capital Improvement.
3. Charges to clean and sweep residential chimneys and flues serving not more than three families living independently of each other and doing their cooking on the premises are exempt from Sales Tax.
4. Charges to repair a damaged residential masonry chimney serving not more than three families living independently of each other and doing their cooking on the premises are exempt from tax. In addition, if the charge for "rebuilding" reaches the level of constituting an exempt capital improvement to real property, tax should not be charged on charges to install the rebuilt masonry chimney provided the property owner issues the installer with a properly completed Certificate of Exempt Capital Improvement.
5. By "repointing damaged mortar joints on existing masonry chimney" it is assumed the Taxpayer is referring to fixing the chimney cement. Charges to re-point damaged mortar joints on an existing residential masonry chimney serving not more than three families living independently of each other and doing their cooking on the premises are exempt from Sales Tax.
6. The installation of a new metal chimney cap where one did not exist or an old cap has failed constitutes an exempt capital improvement to real property. Thus, Taxpayer should not charge the property owner Sales Tax on a charge to install the new metal chimney cap provided the property owner issues Taxpayer a properly completed Certificate of Exempt Capital Improvement.
7. The installation of a new metal flashing or replacing old metal flashing which has failed constitutes an exempt capital improvement to real property. Thus, Taxpayer should not charge the property owner Sales Tax on a charge to install the new metal flashing provided the property owner issues Taxpayer a properly completed Certificate of Exempt Capital Improvement.

8. The installation of a new masonry chimney where one did not exist previously constitutes an exempt capital improvement to real property. Thus, Taxpayer should not charge the property owner Sales Tax on a charge to install the new masonry chimney provided the property owner issues Taxpayer a properly completed Certificate of Exempt Capital Improvement.

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.