



Mobile shredding of computer hard drives

LR: 2016-3-SUT – Issued October 5, 2016

Tax: Sales and Use Tax

Taxpayer requested a Letter Ruling regarding the application of the New Jersey Sales and Use Tax Act (N.J.S.A. 54:32B-1 et seq.) to charges for services performed in connection with the destruction and disposal of computer hard drives by Taxpayer.

Facts

Taxpayer is a NJ DEP licensed recycler of universal waste consumer electronics. Taxpayer provides computer recycling services to New Jersey based organizations. According to Taxpayer, under the New Jersey E-Waste law, no electronics are permitted to be landfilled. Taxpayer is one of twelve authorized recycling facilities located in the State. Taxpayer provides annual electronic recycling tonnage reports to New Jersey municipalities, county MUAs, and the New Jersey DEP. Taxpayer does not charge New Jersey Sales Tax on these services.

As part of Taxpayer's recycling process, it disassembles and shreds the electronics to begin the material sorting process required to recycle the materials utilized in the manufacturing of electronics. Many of Taxpayer's clients have data security concerns with hard drives located within the computers recycled. The hard drives are shredded as part of the recycling process and Taxpayer provides a certificate of destruction as well as a recycling certificate to the clients.

Mobile shredding of hard drives had been prohibited by the NJ DEP. Taxpayer petitioned the DEP, and was granted the ability to provide onsite hard drive shredding as long as Taxpayer maintained all of the required regulatory recycling requirements. Taxpayer provides this service to its recycling clients and has not charged Sales Tax because it believes the onsite shredding is part of the recycling process.

Taxpayer states that, as a result of the passing of P.L. 2015, c. 188, the DEP regulation that prohibited onsite hard drive shredding was overturned, and allows any entity to perform onsite shredding for data security purposes without NJ DEP approval. Even though the law allows the onsite shredding of hard drives, the shredded particles must be delivered for recycling to an authorized recycler. Taxpayer is one of the authorized recycling locations.

Issues

1. Whether the charges by Taxpayer for the mobile shredding of hard drives remains a non-taxable charge as part of its recycling service.
2. Whether the charges by a third-party that is not a recycling company for the mobile shredding of hard drives is subject to tax.

Discussion

The New Jersey Sales and Use Tax Act imposes Sales Tax on enumerated services, including the processing of tangible personal property for a person who directly or indirectly furnishes the tangible personal property upon which such services are performed. N.J.S.A. 54:32B-3(b) (1).

Shredding is considered the processing of tangible personal property subject to Sales Tax pursuant to N.J.S.A. 54:32B-3(b)(1). See New Jersey State Tax News, Vol. 32, No. 1, p. 9 (Spring 2003).

Further, Sales Tax is imposed on the "maintaining, servicing or repairing real property, ...excluding garbage removal and sewer services performed on a regular contractual basis for a term not less than 30 days." N.J.S.A. 54:32B-3(b) (4); see also N.J.A.C. 18:24-3.1. "Garbage" means contained, bundled, or piled trash, waste, and rubbish, including discarded recyclables. N.J.A.C. 18:24-13.2(a). "Removal" includes only the operation of picking up and physically removing contained waste from the premises and does not include activities related to maintaining or servicing property or any processing of the waste product. N.J.A.C. 18:24-13.2(b).

Conclusions

1. Although a change may have been made regarding the ability to provide onsite hard drive shredding, the New Jersey Sales and Use Tax Act has not changed. The service of shredding and providing a certificate of destruction has been and continues to be the processing of tangible personal property which is subject to Sales Tax pursuant to N.J.S.A. 54:32B-3(b)(1). The charges for the trash removal service may not be subject to Sales Tax if performed on a regular contractual basis for a term not less than 30 days, and if separately stated on the invoice. However, if the charges for non-taxable trash removal and taxable shredding services are not separately identified, then Sales Tax must be charged on the entire bill.
2. The shredding of hard drives is a taxable service pursuant to N.J.S.A. 54:32B-3(b) (1). This is the case regardless of who is performing the 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.