

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-10(25)S
Sales Tax
June 16, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S091030A

██████████, asks whether receipts from the service of towing and transporting motor vehicles are subject to sales tax.

We conclude that the service of towing disabled or inoperative motor vehicles is subject to sales tax, regardless of whether the towing provider itself performs repairs on the vehicles it tows. Transportation of motor vehicles, heavy equipment, and other tangible personal property provided by common or contract carriers is not an enumerated service subject to the sales tax.

Facts

Petitioner operates a business engaged in maintenance and repair of equipment, including cars, trucks, tractors (as in tractor-trailer vehicles), and other heavy equipment. Petitioner also owns and operates tow trucks, heavy wreckers for towing large vehicles such as tractors, dump trucks, etc., and flatbed transport vehicles.

Petitioner tows and transports disabled and inoperative vehicles to his repair facility where repairs are performed. Petitioner also delivers inoperable vehicles to other repair shops, and to the owners' vehicle maintenance facilities. In addition, Petitioner performs long distance transports of vehicles -- for example, picking up and transporting a vehicle from Brooklyn, New York back to ██████████. The long distance transports are typically billed by distance (by the mile) but also occasionally by the hour based on the distance/time for the one way trip (e.g., Brooklyn to ██████████).

Large vehicles (e.g., trucks, tractors) that could not be transported using flatbed vehicles due to the size/weight of the transported vehicle, underpass/overpass bridge clearance, etc., out of necessity, are always transported via a tow using a heavy wrecker.

Petitioner has New York State Department of Transportation (DOT) and ICC carrier licenses and authorizations.

Opinion

In general, charges for the service of towing disabled and inoperative vehicles are subject to sales tax. *See Michael Vecchio*, Adv Op Comm T & F, February 25, 1997, TSB-A-97(10)S; *Henry Daley*, Adv Op Comm T & F, February 24, 1997, TSB-A-97(8)S. Charges for the transportation of property, except to the extent that the charge for a transportation or delivery service is part of a vendor's receipt from the sale of taxable property or services, are not subject to sales tax. *See* sections 526.5(g)(1) and 526.5(g)(3) of the Sales and Use Tax Regulations.

The towing of an inoperative or disabled vehicle or equipment, either by tow truck or flatbed, so that repair or maintenance services may be performed on that vehicle or equipment, whether by Petitioner or another is considered a constituent part of the maintenance service subject to tax pursuant to section

1105(c)(3) of the Tax Law. The charge for the towing service, whether or not separately invoiced, and whether or not separately stated on a bill or invoice to the customer for repair or maintenance, is subject to sales tax under section 1105(c)(3).

Recovery services related to a motor vehicle's or equipment's ability to operate properly (e.g., dislodging a vehicle and returning it to the roadway, or removing a disabled vehicle from the roadway) are activities that are related to keeping the motor vehicle or equipment in a condition of fitness, efficiency, readiness, or safety, and therefore constitute repair or maintenance services to the vehicle or equipment. Charges for these services are also subject to sales tax. *See* section 1105(c)(3) of the Tax Law and section 527.5(a)(3) of the Sales and Use Tax Regulations. It is immaterial whether such services are provided by tow truck or flatbed.

If Petitioner has provided towing service that is subject to tax and its customer is claiming exemption from sales tax, the customer must provide Petitioner with an appropriate and properly-completed exemption document. For example, if the customer's vehicle is used exclusively by the customer for rental purposes, the customer may provide Petitioner with a properly completed *Resale Certificate* (Form ST-120) in lieu of paying sales tax on the charges for towing. If the customer's vehicle or equipment is used directly and predominantly in the production of tangible personal property for sale, Petitioner's towing service will be exempt from sales tax under section 1105-B(b) of the Tax Law. The customer in that case should provide Petitioner with a properly completed *Exempt Use Certificate* (Form ST-121) in lieu of paying sales tax on the charges for towing. If the customer's vehicle or equipment is a tractor trailer or semitrailer of which the gross vehicle weight exceeds 26,000 pounds, the towing services will be exempt under section 1115(g) of the Tax Law. The customer in that case should provide Petitioner a properly completed *Exemption Certificate for Tractors, Trailers, Semitrailers, or Omnibuses* (Form ST-121.1).

The service of transporting property from one location to another is generally not a service upon which sales tax is imposed. The transportation of a vehicle or equipment (including as an *automobile transporter*) from one location to another by Petitioner as a private or common carrier of goods (i.e., transportation subject to regulation pursuant to Transportation Law section 2.8 and Article 8 of the Transportation Law), if not otherwise provided in conjunction with the sale of, or repair, maintenance or storage services to, the transported property (e.g.; Petitioner is merely flatbedding a classic car to or from a car show, transporting a forklift from one customer facility to another, or transporting a repossessed vehicle), constitutes a nontaxable transportation service. Thus, when Petitioner is providing transportation of vehicles (capable of being operated) or equipment pursuant to its Department of Transportation (DOT) certificate and ICC permit as a common carrier or contract carrier of goods by motor vehicle, its charges for such transportation services are not subject to tax.

However, *receipts subject to tax* includes any charge by the vendor to the purchaser for shipping or delivery regardless of whether such charges are separately stated (*see* Tax Law section 1101(b)(3)). Accordingly, the charges by a vendor for towing or transportation whether by common carrier, contract carrier or otherwise are subject to sales tax when the towing or transportation relates to the shipping or delivery of the property (including property upon which taxable services were performed) by the vendor to its customer.

Generally, the rate of tax to be collected is determined by the location where the vehicle or other equipment that was the subject of the tow is delivered to the customer (i.e., the vehicle's owner, operator, etc.) or the customer's designee. If the charges for the towing service are billed to the vehicle's owner, operator, etc. by the vendor who performed maintenance services upon the towed vehicle, or sold and installed property in or on the vehicle (e.g., batteries, tires, hoses, belts, etc.), the rate of tax is determined by

the location where that vendor delivers the repaired vehicle to the customer upon completion of the maintenance and repair, installation of the property sold, or other taxable sales and services.

DATED: June 16, 2010

/S/

Jonathan Pessen
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