

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-81(48)S
Sales Tax
November 17, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810609A

On June 9, 1981, a Petition for Advisory Opinion was received from Migay Trucking Corp., 225 South Fourth Avenue, Mount Vernon, New York 10551.

The issues raised are whether Petitioner's purchases of replacement parts, repairs and specialized servicing for the building, maintenance and repair of vehicles which are or will be rented to Petitioner's customers are subject to State and local sales tax and whether Petitioner's suppliers must accept a Resale Certificate (Form ST-120), when submitted by Petitioner.

Petitioner purchases, builds and maintains automobiles, trucks and vans which it rents to its customers. Petitioner has no other business interest and receives its income solely from the rental of vehicles. When placing orders with automotive vendors for replacement parts, repairs, and specialized servicing, Petitioner issues a Resale Certificate (Form ST-120) to such vendors. Some vendors do not honor the resale certificate and charge Petitioner sales taxes.

Section 1101(b)(4) defines a retail sale as ". . . a sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property . . .". Section 1101(b)(5) defines "sale, selling or purchase" as . . . "Any transfer of title or possession or both, . . . rental, . . . conditional or otherwise, in any manner or by any means whatsoever for a consideration."

Section 1132(c) of the Tax Law states, in part: ". . . it shall be presumed that all receipts for property or services of any type mentioned in subdivisions (a), (b), (c) and (d) of section eleven hundred five, . . . are subject to tax until the contrary is established, and the burden of proving that any receipt . . . is not taxable hereunder shall be upon the person required to collect the tax or the customer. Unless (1) a vendor shall have taken from the purchaser a certificate in such form as the tax commission may prescribe, signed by the purchaser and setting forth his name and address and, except as otherwise provided by regulation of the tax commission, the number of his registration certificate, together with such other information as said commission may require, to the effect that the property or service was purchased for resale . . . , the sale shall be deemed a taxable sale at retail. The vendor shall not be required to collect tax from purchasers who furnish a certificate of resale . . . in proper form."

Petitioner's purchases of replacement parts for damaged or worn parts, purchases of specialized services, such as welding, body work, painting and frame straightening, and purchases of fuels, lubricating grease and motor oils for use in the maintenance of Petitioner's rental vehicles are purchases for resale within the meaning and intent of section 1101(b)(4) of the Tax Law. Accordingly, such purchases are not subject to State or local sales tax, provided Petitioner furnishes its supplier a properly completed Resale Certificate (Form ST-120).

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However, as the Tax Law does not contain any provision which requires that a vendor accept an exemption certificate in lieu of collecting sales tax, a vendor may refuse to accept Petitioner's resale certificate and, instead, may collect sales tax from Petitioner. The vendor is not under an obligation to accept an exemption certificate.

When a vendor does not accept Petitioner's resale certificate and collects sales tax, Petitioner may claim a credit for any tax paid on purchases of tangible personal property or services for resale on its quarterly Sales and Use Tax Return (ST-100), at line 2a, page 1. In such instance, Petitioner must maintain appropriate documentation to substantiate the amount so claimed. Such credit must be claimed within three years from the date the tax collected is payable by the vendor to the State Tax Commission.

DATED: October 29, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau