

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

TSB-A-86(2)S
Sales Tax
December 19, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S850812A

On August 12, 1985, a Petition for Advisory Opinion was received from Metropolitan Taxicab Board of Trade, Inc., 24-16 Bridge Plaza South, Long Island City, New York 11101.

The issue raised is whether the charge for the lease of a taxicab license, which is included in the total periodic payment for the short term lease of a taxicab, is a non-taxable receipt.

Petitioner's members (the "lessors") are owners of automobiles equipped as taxicabs and licensed to transport passengers within New York City. These taxicabs are available for lease to licensed drivers in the metropolitan area. Lease periods usually are limited to either a 12 hour shift, a week, or a month. No lease extends over a period of more than six months and about 95 percent of all leases are entered into for a 12 hour period.

In the rental agreement, which doubles as a billing, the charge for the lease of the taxicab license is stated separately from the automobile rental charge. With regard to the latter charge, Petitioner points out that, under certain conditions, the Sales and Use Tax Regulations allow lessors of automobiles subject to New York City sales tax to exclude from tax 10 percent of the total rental receipts. Petitioner contends that, in addition, the charge for the taxicab license should be exempt from tax as a fee paid for the intangible right to operate an automobile as a taxicab. Petitioner cites Joseph C. Endres, Decision of the State Tax Commission, May 20, 1983, TSB-H-83(124)S, where, in a bulk sales transaction, assets representing a franchise fee were held exempt from sales tax.

Section 1105(a) of the Tax Law imposes a tax on the receipts from every retail sale, except for resale, of tangible personal property. According to Regulation Section 526.7(a)(2) the term sale includes rentals, leases or licenses to use or consume tangible personal property.

Section 1101(a)(3) of the Tax Law, in relevant part, defines the term receipt as "the amount of the sale price of any property. . . taxable under this article, . . . without any deduction for expenses" However, Regulation Section 530.4(c) contains special provisions with regard to receipts from the rental or lease of motor vehicles in New York City, which read as follows:

"Provided all registration fees and all insurance charges are paid by the lessor, the amount of tax to be collected on charges for the rental or lease of motor vehicles subject to the eight and one-quarter percent sales or use tax rate effective in New York City may be computed on 90 percent of the total rental or lease charge,

and such method of computation shall be in lieu of separately stating a charge for these or other nontaxable items (including any amounts separately stated on billings, other than charges for chauffeurs and helpers)." (Emphasis added).

Chapter 65 of the New York City Charter defines a taxicab license as a "vehicle license". The owner of the license is entitled to its yearly renewal, provided the taxicab passes inspection once every four months. The transfer of a license from one vehicle to another must be approved by the New York City Taxi and Limousine Commission.

Accordingly, the charge for a taxicab license is a registration fee within the meaning and intent of Regulation Section 530.4(c). If the lessor chooses to compute the sales tax on 90 percent of the entire periodic rental charge, the taxicab license fee is deemed to be part of the non-taxable 10 percent of the total receipt.

In the alternative, the lessor may state separately on the rental billing the registration fees, insurance charges and other non-taxable charges (i.e., charges not representing the sale or servicing of tangible personal property) and may collect tax on the difference between the sum of the exempt charges and the total amount of the billing.

The amounts excluded from tax must be expenses paid by the lessor, which should be apportioned to the rental billing by a method that allows the lessor to recover its cost (without mark-up) of the registration fee, insurance charge, etc., for each vehicle within the period to which such fee, premium or other expense is applicable.

If all non-taxable charges, other than those for chauffeurs or helpers, connected with the rental or lease are not paid by the lessor, the sales tax due must be computed on 100 percent of the total rental or lease charge.

Publication 702 (12/84) of the Department of Taxation and Finance contains detailed instructions for the computation of sales tax by lessors of motor vehicles.

DATED: December 19, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth herein.