

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

TSB-A-91 (8)S
Sales Tax
January 15, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S900425A

On April 25, 1990 a Petition for Advisory Opinion was received from Clark Rigging & Rental Corp. 3235 Lockport Road, Niagara Falls, New York 14305.

The issue raised by Petitioner, Clark Rigging & Rental Corp., is whether certain self-propelled construction machinery are "motor vehicles" within the meaning of Section 541.9(c)(2) of the Sales and Use Tax Regulations.

Petitioner is in the business of, among other things, renting construction machinery to construction contractors. Some of the construction machinery that Petitioner leases is self-propelled. The construction machinery may be characterized into the following categories:

1. Truck Cranes:

Truck cranes are vehicles consisting of a crane chassis sitting upon two, three or four axle/wheel assemblies. All truck cranes leased by Petitioner are licensed to operate on public highways. None of the truck cranes rented by Petitioner has a maximum speed of less than 30 miles per hour. The truck cranes are operated on public highways in traveling between construction sites.

2. Boom Trucks:

Boom trucks are similar to the truck cranes described above, but are generally smaller, faster vehicles. All boom trucks leased by Petitioner are licensed to operate on public highways.

3. Tractor/Trailers:

When the construction machinery leased by Petitioner to a contractor is not suitable for operation on a public highway, Petitioner leases flatbed tractor-trailer combinations to transport the construction machinery. Some of the tractor-trailer combinations are specifically designed for transporting construction equipment. Petitioner also leases tractor-trailer combinations to contractors for other special handling needs (e.g. transporting large tanks for chemical companies). Both the tractors and the trailers rented by Petitioner are licensed for over-the-road use.

4. Trailers:

Sometimes, Petitioner's customers have a tractor, but need one of Petitioner's specially-designed trailers for specific hauling purposes. Under these circumstances, Petitioner will rent only a trailer assembly to these customers. Each of the trailers is separately licensed for over-the-road transportation.

5. Pick-Up Trucks:

Infrequently, Petitioner will rent to a contractor a pick-up truck for the contractor's use in construction activities, or to tow one of the trailers also rented by Petitioner. Without exception, these pick-up trucks are licensed for over-the-road use.

Petitioner pays all insurance, registration and other non-taxable items incurred with respect to the vehicles listed above.

Section 541.9(c)(2)(iii) of the Sales and Use Tax Regulations provides that:

Where the lessor pays all registration fees, insurance charges, and other nontaxable items, the tax to be collected from the contractor on the charges for the rental or lease of a motor vehicle may be computed on 82% of the total rental or lease charge, unless a charge is subject to the sales tax in New York City in which case the tax on each such charge may be computed on 90% of the total charge. When the exclusion is claimed, the registration fees, insurance charges and other nontaxable items charged the contractor (other than the driver's and helper's wages if separately stated) must be included in the total rental or lease charges. If the lessee has an option to pay for additional insurance coverage, such charge, if separately stated is exempt from the tax.

It should be noted that Section 541.9(c)(2)(iii) of the Regulations is not provided for by statute and therefore if this section of the Regulations was to be repealed, the issue raised by the Petitioner would be moot.

The Tax Law does not define the term "motor vehicle" but Sections 1115(a)(14) and 1117 of said law refers to Section 125 of the Vehicle and Traffic Law for such definition. In addition, Section 1117 refers to Section 156 of the Vehicle and Traffic Law for the definition of "trailer".

Section 125 of the Vehicle and Traffic Law defines motor vehicles as:

Every vehicle operated or driven upon a public highway which is propelled by any power other than muscular power, except (a) electrically-driven mobility assistance devices operated or driven by a person with a disability, (b) vehicles which run only upon rails or tracks, (c) snowmobiles as defined in article forty-seven of this chapter and (d) all terrain vehicles as defined in article forty-eight-B of this chapter. For the purposes of title four, the term motor vehicle shall exclude fire and police vehicles. For the purposes of titles four and five the term motor vehicles shall exclude farm

type tractors and all terrain type vehicles used exclusively for agricultural purposes, or for snow plowing, other than for hire, farm equipment, including self-propelled machines used exclusively in growing, harvesting or handling farm produce, and self-propelled caterpillar or crawler-type equipment while being operated on the contract site.

The State Tax Commission in Colonial Sand & Stone Co., Inc., Dec St Tx Comm, June 30, 1977, STH 77-41 held that the chassis part of concrete mixer trucks which were used in the transportation of ready-mix concrete to construction sites did not constitute machinery and equipment for use and consumption directly and exclusively in the production of tangible personal property for the purposes of Section 1115(a)(12) of the Tax Law although the cement mixer parts which were attached to the chassis were entitled to the exemption provided by said section. The same reasoning, which allows the taxability of the mixer to be separated from the taxability of the chassis, applies to truck cranes and boom trucks since the crane or boom portions of said trucks provide a function separate and apart from the transportation function provided by the chassis portions of the trucks. This is true even though the truck cranes and boom trucks may be considered to be a single unit for vehicle and traffic law purposes. Therefore the rental value attributable to the chassis portion of the truck cranes and boom trucks are entitled to the exclusion contained in Section 541.9(c)(2)(iii) of the Sales and Use Tax Regulations, where the rental value attributable to the crane or the boom is not entitled to said exclusion.

Section 527.1(b) of the Sales and Use Tax Regulations provide that "When tangible personal property, composed of taxable and exempt items is sold as a single unit, the tax shall be collected on the total price."

Therefore when Petitioner rents tangible personal property such as trailers along with the tractors, boom trucks and truck cranes, it must separately state its charge for the tractor and trailer as well as the truck chassis from the boom and crane in order to avail itself of the exclusion contained in Section 541.9(c)(2)(iii) of the Sales and Use Tax Regulations.

The Tax Law was amended effective January 1, 1989 by adding paragraph 26 to Section 1115 to provide an exemption from sales tax for:

Tractors, trailers or semi-trailers, as such terms are defined in article one of the vehicle and traffic law, and property installed on such vehicles for their equipping, maintenance or repair, provided such vehicle is used in combination where the gross vehicle weight of such combination exceeds twenty-six thousand pounds.

Tractors, trailers and semi-trailers are defined in the Vehicle and Traffic Law as follows:

§ 143. Semitrailer

Any trailer which is so designed that when operated the forward end of its body or chassis rests upon the body or chassis of the towing vehicle.

§ 156. Trailer

Any vehicle not propelled by its own power drawn on the public highways by a motor vehicle as defined in section one hundred twenty-five operated thereon, except motorcycle side cars, vehicles being towed by a non-rigid support and vehicles designed and primarily used for other purposes and only occasionally drawn by such a motor vehicle.

§ 151-a. Tractor

A motor vehicle designed and used as the power unit in combination with a semitrailer or trailer, or two such trailers in tandem. Any such motor vehicle shall not carry cargo except that a tractor and semitrailer engaged in the transportation of automobiles may transport motor vehicles on part of the power unit.

Therefore if Petitioner rents tractors, trailers or semi-trailers whose gross combined weight exceeds 26,000 lbs., then such rental is exempt from the imposition of sales tax.

DATED: January 15, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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