

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

TSB-A-96 (21)S
Sales Tax
March 22, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S950711A

On July 18, 1995, a Petition for Advisory Opinion was received from R.J. Valente Gravel, Inc., 8 Jennifer Drive, Wynantskill, New York 12198.

The issues raised by Petitioner, R.J. Valente Gravel, Inc., are:

1. Whether a vehicle which is used as both a truck and a tractor is considered to be a tractor for sales tax purposes if it is registered with the Department of Motor Vehicles as a tractor.
2. Whether the Petitioner is entitled to a refund or credit of sales taxes paid on the purchase of the vehicle which is registered with the Department of Motor' Vehicles as a tractor.

Petitioner makes the following submission of facts.

Petitioner has purchased a number of vehicles which it has registered with the Department of Motor Vehicles as trucks. Petitioner paid sales tax to the vendor at the time of purchase. Petitioner uses these vehicles part of the year as dump trucks. However, Petitioner periodically uses these vehicles as tractors by removing the dump body and attaching a fifth wheel hookup so that the vehicles pull a semi-trailer.

According to Petitioner, the Department of Motor Vehicles requires that, when a vehicle's use changes between two classes during a registration period, it should be registered in the more expensive category. The one registration suffices for both uses. The tractor registration is more expensive than a truck registration. According to Petitioner, therefore, the vehicles described above should be registered with the Department of Motor Vehicles as tractors. Petitioner did, in fact, change the registration for these vehicles from a truck registration to a tractor registration.

Section 1115(a) of the Tax Law provides, in pertinent part, as follows:

Sec. 1115. Exemptions from sales and use taxes.--(3) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(26) 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.

Section 525.2(a)(2) of the Sales and Use Tax Regulations provides as follows:

(2) The sales tax is a "transaction tax," liability for the tax occurring at the time of the transaction. Generally speaking, the taxed transaction is an act resulting in the receipt of consideration for the transfer of title, or possession or both to property or rendition of services from one person to another. The time or method of payment is immaterial, since the tax becomes due at the time of transfer of property or rendition of service.

Section 528.26(a) (1) of the Sales and Use Tax Regulations provides as follows:

(1) The sale or lease of qualifying vehicles as defined in subdivision (b) of this section and property installed on such vehicles for the equipping, maintenance or repair thereof are exempt from the sales and use tax.

Section 528.26(b) (1) of the Sales and Use Tax Regulations defines tractor as follows:

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

Based on the facts presented, the Petitioner purchased the vehicles and registered them as dump trucks with the Department of Motor Vehicles. Petitioner then operated the vehicles as dump trucks. The trucks were modified after registration so that the dump body was removed and a fifth wheel hookup installed. This enabled the modified truck to operate as a tractor to pull a trailer. Section 1115(a)(26) of the Tax Law provides an exemption for tractors, trailers or semi-trailers, as these terms are defined in article one of the vehicle and traffic law. Section 525.2(a)(2) of the Sales and Use Tax Regulations defines the sales tax as a "transaction tax" where liability for the tax occurs at the time of the transaction. Section 528.26(b)(1) of the Sales and Use Tax Regulations defines a tractor as a motor vehicle designed and used as a power unit in combination with a semi-trailer or trailer, or two such trailers in tandem. This definition states that "[a]ny such motor vehicle shall not carry cargo except that a tractor and semi-trailer engaged in the transportation of automobiles may

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transport motor vehicles on part of the power unit." The motor vehicles purchased by Petitioner were dump trucks at the time of purchase and Petitioner used them as such. They do not qualify for exemption from the sales and compensating use tax under Section 1115(a)(26) of the Tax Law since Petitioner used them as dump trucks to transport cargo prior to being converted to a tractor. Accordingly, Petitioner is not entitled to a refund or credit of sales taxes paid when the motor vehicles were originally purchased.

DATED: March 22, 1996

/s/
Doris S. Bauman
Director
Technical Services Bureau

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