

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

TSB-A-97(8)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S950918A

On September 18, 1995 the Department of Taxation and Finance received a Petition for Advisory Opinion from Henry Daley, 1 Cross Island Plaza, Rosedale, New York 11422.

The issues raised by Petitioner, Henry Daley, are:

1. Whether the New York City Marshal or an independent towing company is required to collect and remit sales tax on receipts from the sale of certain towing services performed in connection with the Parking Violations Bureau program in New York City.

2. Whether the New York City Marshal is required to collect and remit sales tax on auction sales of vehicles which have been towed.

Petitioner submits the following facts as the basis for this Advisory Opinion.

New York City Marshals (hereinafter "Marshals") in the Parking Violations Bureau program are authorized to tow away vehicles where the registrant of such vehicle owes New York City delinquent parking tickets. The towing is done by an independent towing company.

The vehicle registrant is then required to pay to the Marshal the outstanding amount of parking tickets, statutory Marshal's fees, towing expense of \$150.00, and sales tax on the towing charge. These requirements must be met in 30 days, or the car will then be auctioned off by the Marshal, with the assistance of an independent auctioneer. The Marshal remits sales tax on the towing charges to New York State.

When the vehicle is sold at auction, sales tax is collected by the Marshal on the sales price. The proceeds of the auction sale (net of sales tax) are used to pay for the outstanding parking tickets, reimbursement of \$150.00 to the towing company and fees to the Marshal. The Marshal remits the sales tax on the sale price of the vehicle. The towing company does not collect or remit any sales tax to New York State. In some cases the selling price of a vehicle at auction is less than the towing charges (\$150.00).

Applicable Law and Regulations

Section 1105(a) of the Tax Law imposes a tax upon "[t]he receipts from the sale of tangible personal property, except as otherwise provided in this article."

Section 1105(c) of the Tax Law imposes tax on receipts from the sale, except for resale, of certain enumerated services, including under paragraph (3) the service of "[i]ninstalling tangible personal property, ... or maintaining, servicing or repairing tangible personal property, ... not held for sale in the regular course of business" and under paragraph (4) the service of "[s]toring all tangible personal property not held for sale in the regular course of business."

Section 526.11 of the Sales and Use Tax Regulations provides in part:

Persons required to collect tax. [Tax Law, §1131(1)] (a) *General.* Persons required to collect tax includes: (1) Every person who makes sales of tangible personal property as a vendor. See section 526.10 of this Part.

Opinion

Charges for the towing services are subject to sales tax. See New York State and Local Sales Tax Information Booklet No. 5, Questions and Answers on Motor Vehicles, Garages and Service Stations, ST-215 (9/73). Marshals are required to collect and remit sales tax on receipts from the sale of these towing services from the vehicle owner when the owner claims the vehicle from the Marshal. The applicable rate of sales tax in New York City is 8 1/4 percent.

The sale of the towing service by an independent towing company to a Marshal is not subject to tax, since the service is purchased by the Marshal for resale to the vehicle owner. The Marshal should provide the towing company with a properly completed resale certificate (Form ST-120) to evidence the transaction. The resale certificate is then retained by the towing company as proof of a non-taxable sale. Non-taxable sales are reflected on a vendor's sales tax return as the difference between gross and taxable sales.

Since the Marshal, and not the towing company, is making a retail sale of tangible personal property at auctions for the sale of motor vehicles, the Marshal is the person required to collect State and local sales taxes on the sale of the vehicles. The tax to be collected is based on the retail selling price of the vehicle, whether or not the selling price exceeds the amount owed for towing. As vendors of tangible personal property making sales in this State, Marshals are required to register under Section 1134 of the Tax Law and to file returns and remit tax required to be collected.

DATED: February 24, 1997

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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