

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

TSB-A-97(10)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S950920A

On September 20, 1995, the Department of Taxation and Finance received a Petition for Advisory Opinion from Michael Vecchio, NYC Dept. of Investigation, Marshal's Bureau, 80 Maiden Lane - 17th Floor, New York, New York 10038.

The issue raised by Petitioner, Michael Vecchio, is whether towing charges which are allocated to a towing company from the proceeds of a vehicle sold at a New York City Marshal's auction are subject to sales tax.

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

Pursuant to the New York City Civil Court Act, New York City Marshals (hereinafter "Marshals") are given the authority to enforce civil court judgments. Marshals also levy and seize vehicles with outstanding summonses on behalf of the New York City Parking Violations Bureau. Marshals hire private towing companies and private storage facilities who tow and store these seized vehicles. The vehicles usually get redeemed by their owners, who must pay the Marshal the following fees which are forwarded to the Parking Violations Bureau and to the towing company:

- a) the outstanding summonses;
- b) statutory Marshal's fees and poundage;
- c) towing fee of \$150.00 plus sales tax; and
- d) any reimbursed expenses deemed necessary.

Once the above fees are paid by the owner, the Marshal gives the owner a release form which the owner must bring to the storage facility when redeeming the vehicle. At that point the owner must pay the proper storage fees before the vehicle is released.

Vehicles which are not redeemed are sold at a Marshal's public auction. The Marshal must advertise this auction two days prior to the sale. Sales tax is collected on the selling price of each vehicle sold at the auction. The Marshal collects the total proceeds from the auction, including the sales tax on the selling price of the vehicle, and deposits the funds in a trust account to appropriate parties, including the New York State Department of Taxation and Finance. The following is an example of the distribution of the proceeds of a vehicle sold at a Marshal's auction:

Judgment Amount:	\$1,500.00
Selling Price:	\$1,000.00
Sales Tax:	\$82.50

a) Auctioneer (5% of selling price)	\$50.00	
b) Plate Remover (\$1.50 per car)	\$1.50	
c) Towing company	\$150.00	(or \$162.38, if taxable)
d) Storage (\$10.00 per day)	\$100.00	
e) Marshal's statutory fees	\$45.00	
f) Marshal's Poundage (5%)	\$50.00	
g) Reimbursed expense (mailing)	\$3.08	
h) Advertising Expense	\$15.00	
(Total cost of ad divided among total number of vehicles sold)		
i) Net amount to Parking Violations Bureau	\$585.42	

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.

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 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.

However, towing charges paid by a Marshal to a towing company from the proceeds of a vehicle sold at a Marshal's auction are not subject to tax, since the towing services are purchased by the Marshal for resale. 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 is making retail sales of tangible personal property at auctions for the sale of motor vehicles, the Marshal is required to collect sales tax imposed by Section 1105(a) of the Tax Law on the sale of the vehicle, as well as locally imposed sales tax. 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 a vendor of tangible personal property making sales in this State, the Marshal is required to register under Section 1134 of the Tax Law and to file returns and remit tax required to be collected.

DATED: February 25, 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.