

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

TSB-H-81 (53) S  
Sales Tax  
April 14, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S801222B

On December 22, 1980 a Petition for Advisory Opinion was received from Peck's Trucking, Inc., 32-34 Main Street, Cassadaga, New York 14718.

Petitioner inquires as to the proper way to invoice sales and deliveries of sand and gravel such that the delivery charges will be exempt from the sales tax imposed under Article 28 of the Tax Law.

Petitioner is a corporation in the business of selling sand and gravel. Petitioner states that in most instances the trucking cost exceeds the cost of the material delivered but that it bills the trucking cost at only 50% of the total bill because of a belief that under the Tax Law and exempt, separately stated transportation charge may not exceed 50% of the total charge.

Section 1105(a) of the Tax Law imposes a tax on the "...receipts from every retail sale of tangible personal property, except as otherwise provided in this article." Section 1101(b)(3) of the Tax Law defines the term "receipt," in relevant part, as "The amount of the sale price of any property...but excluding the cost of transportation of tangible personal property sold at retail where such cost is separately stated in the written contract, if any, and on the bill rendered to the purchaser."

The Sales and Use Tax Regulations provide that in order to qualify for this exclusion from the definition of taxable receipts "...transportation charges must be reasonable in relation to prevailing established rates. The bureau may establish reasonable charges for an industry, and reduce the exclusion for excessive transportation charges." 20 NYCRR 526.5(g)(4).

Inasmuch as no "reasonable charges" have been established pursuant to 20 NYCRR 526.5(g)(4), with respect to the industry in which Petitioner is involved, Petitioner may separately state any transportation charge which is both accurate and reasonable, in which case the same will not be subject to sales tax.

DATED: February 25, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau