

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

TSB-A-81(45)S
Sales Tax
November 2, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810428C

On April 28, 1981 a Petition for Advisory Opinion was received from Louis A. Fuoco Bus Line, Inc., 645 South Country Road, East Patchogue, New York 11772.

The issues raised are whether sales tax is due on (1) Petitioner's purchase of five mini-buses to be used in connection with a contract with Suffolk County to provide special feeder line bus service between various communities; (2) Petitioner's purchase of two-way radios for those buses as required by the contract; (3) future purchases of buses by Petitioner; and (4) Petitioner's purchases of motor fuel, parts, equipment and supplies. Petitioner also asks whether he is eligible to apply for a direct payment permit. In addition, Petitioner asks whether the vehicles and related equipment used to provide this bus service will be exempt from sales tax by virtue of the fact that these items will be under the direction and control of Suffolk County.

Petitioner is a local transit bus operator with consents and certificates of authority issued by the County of Suffolk, Town of Brookhaven and Village of Patchogue to provide local bus service between various points within Suffolk County, as well as a Certificate of Public Convenience and Necessity issued by the State of New York. Petitioner has entered into a contract with Suffolk County to furnish county-sponsored bus service according to fare schedules, routes and operating procedures as specified in the contract.

Section 1119 of the Tax Law provides for refunds or credits of sales tax paid based on proof of certain uses. Subsection (b) therein specifies the refunds and credits which are available to omnibus carriers as follows:

"(b) Subject to the conditions and limitations provided for in this subdivision, a refund or credit shall be allowed for a tax paid pursuant to subdivision (a) of section eleven hundred five, paragraph three of subdivision (c) of section eleven hundred five, or section eleven hundred ten and any tax imposed pursuant to the authority of article twenty-nine on the sale to or use by an omnibus carrier described in this subdivision of any omnibus, and of parts, equipment, lubricants, motor fuel, diesel motor fuel, maintenance, servicing or repair purchased and used in the operation of any such omnibus by such carrier. Any such omnibus carrier must provide local transit service in this state and operate pursuant to a certificate of public convenience and necessity issued by the commissioner of transportation of this state or by the interstate commerce commission of the United States or pursuant to the contract, franchise or consent between such carrier and a city having a population of more than one million inhabitants, or any agency of such city. The amount of such refund or credit shall be determined by first computing the local transit service percentage which shall be the proportion that such carrier's vehicle mileage in local transit service in this state in the calendar year immediately preceding the end of the quarterly return period, prescribed by section eleven hundred thirty-six, to

which such refund or credit relates bears to such carrier's total mileage operated in this state in such year. . . . The amount of the refund or credit allowable on the combined state and local tax paid on such purchases or uses then shall be determined in accordance with the following table:

If the local transit service percentage is	The refund or credit is:
Less than 10 percent	None
10 percent	10 percent of such combined tax
Greater than 10 percent but less than 70 percent	10 percent plus (the product of 1.5 times each whole percent in excess of 10 percent of such combined tax
70 percent or more	100 percent of such combined tax

For purposes of this subdivision, local transit service, vehicle mileage and total mileage operated shall be defined by rule or regulation of the state tax commission and records satisfactory to the tax commission shall be maintained by the carrier."

The Sales and Use Tax Regulations elaborates on section 1119 as follows:

"525.9. Omnibus Carriers Engaged in Local Transit Service - (a) Definitions.

(1) Omnibus carrier. For purposes of this section, an "omnibus carrier" is a carrier which provides local transit service in this State and which operates pursuant to a Certificate or Public Convenience and Necessity issued by the Commissioner of Transportation of this State, by the Interstate Commerce Commission of the United State or pursuant to a contract, franchise or consent between the carrier and a city having a population of more than one million inhabitants or any agency of such city.

(2) Omnibus. For purposes of this section, an "omnibus" is a motor vehicle with a seating capacity of more than seven passengers used for the transportation of passengers for hire. Such term does not include a taxicab.

(3) Local transit service. For the purposes of this section, "local transit service" means a mass transit service (as distinguished from a charter, contract, school bus, sightseeing or other service) provided by an omnibus carrier in which passengers are carried by omnibuses from one point in this State to another point in this State and in performance of which the omnibuses either

(i) regularly pick up or discharge such passengers at their convenience or at bus stops on the street or highway, as distinguished from buildings or facilities used for bus terminals or stations, or

(ii) pick up and discharge passengers at bus terminals or stations, the distance between which is not more than 75 miles, measured along the route traveled by the bus.

(4) Vehicle mileage. "Vehicle mileage" means the number of miles run by all omnibuses operated by a carrier in the performance of local transit service plus the number of idle miles run to the point at which such service begins and from the point at which such service terminates. Such mileage includes only miles operated within New York State.

(5) Total mileage operated. Total miles operated includes the vehicle mileage computed in paragraph (4), supra, plus the number of miles operated in charter service, and other passenger service which is not included within the meaning of vehicle mileage. Such mileage includes only miles operated within New York State.

(6) Local transit service percentage. (i) The local transit service percentage is the proportion that the carrier's vehicle mileage operated in local transit service, as defined in paragraph (4) of this subdivision, bears to the carrier's total mileage operated in this State, as defined in paragraph (5) of this subdivision, for the calendar year immediately preceding the end of the quarterly return period to which such refund or credit relates . . .

(b) Allowability of refund or credit of tax paid. (1) An omnibus carrier engaged in local transit service is allowed a refund or credit of tax paid with respect to the purchase, lease or use of an omnibus.

(2)(i) An omnibus carrier engaged in local transit service is allowed a refund or credit of tax paid with respect to its purchase or use of motor fuel or diesel motor fuel, parts, equipment, (including supplies) actually used or consumed only on or in omnibuses and with respect to its purchase of maintenance services or repairs actually performed on an omnibus.

(ii) The following lists of equipment and supplies are intended to indicate the scope of items covered by section 1119(b) of the Tax Law. . . . it is recognized that these lists are not all inclusive,

(a) Items of equipment, and of supplies that are eligible for refund or credit of tax paid are:

(1) grease, lubricating oils and fluids, and anti-freeze

(2) first aid kits

(3) fire extinguishers

(4) fare boxes

(5) sanitary supplies and chemicals; provided such items are actually used or consumed only on or in the omnibuses.

(b) Items of equipment, and of supplies that are not eligible for refund or credit of tax paid are:

(1) repair trucks and supervisory vehicles, and fuel, parts and lubricants used in the operation, maintenance and repair of such vehicles

- (2) tools and equipment used in garages
- (3) office, terminal and station equipment, furniture and fixture
- (4) log books
- (5) tickets

(iii) If parts, equipment or fuel are purchased and placed in inventory, a refund or credit will be allowed for the quarter in which purchased if they are actually used or consumed on omnibuses in such quarter, or if a statement is furnished by the carrier that such items will actually be used or consumed only on or in omnibuses.

- (3) Determination of amount of refund or credit. The refund or credit is determined in accordance with the following table:

If the local transit service percentage is:	The refund or credit is:
Less than 10 percent	None
10 percent	10 percent of the combined State and local taxes paid
Greater than 10 percent but less than 70 percent	10 percent plus the product of 1.5 times each whole percent in excess of 10 percent of the combined State and local taxes paid
70 percent or more	100 percent of the combined State and local taxes paid

(4) Application for credit or refund. (i) An application for refund or credit must be filed . . . and must cover a period of not less than three months.

(ii) The application for refund or credit must be filed, in the case of tax paid by the applicant to a person required to collect tax, within three years after the date when the tax was payable by such person to the tax commission, or in the case of a tax paid by the applicant to the tax commission, within three years after such amount was payable.

(iii) The applicant may immediately take credit on the return which is due coincident with or immediately subsequent to the time he files his application for refund or credit.

- (iv) No interest may be paid upon any refund or credit allowed.

(c) Records to be maintained. (1) An omnibus carrier must maintain records relating to its purchases or rentals of all omnibuses, parts, equipment (including supplies), motor fuel or diesel motor fuel, maintenance services or repairs purchased and used in the operation of its omnibuses which disclose:

- (i) the vendor's name,
 - (ii) the invoice number,
 - (iii) the invoice date,
 - (iv) the amount of the purchase,
 - (v) the amount of the sales tax paid on the invoice, and
 - (iv) a brief description of the item purchased.
- (2) An omnibus carrier must maintain records which disclose:
- (i) vehicle mileage operated in local transit service in this State,
 - (ii) the number of miles operated in the State that qualifies as charter service, school contract service, excursion service, sight-seeing service, and other passenger service not included within the meaning of vehicle mileage in local transit service, and
 - (iii) total mileage operated within the State.
- (d) Direct payment. (1) Application for direct payment permit for the purchase or use of an omnibus.
- (i) An omnibus carrier engaged in local transit service may make application for a direct payment permit with respect to his purchase or use of an omnibus. The carrier must apply for such direct payment permit on form ST-122. Such permit will not be granted unless the carrier has filed a certificate of registration with the State Tax Commission and the State Tax Commission has issued a certificate of authority . . . to the carrier
- (2) Application for direct payment permit for all taxable purchases and uses. An omnibus carrier may apply for a direct payment permit on form ST-122 with respect to all of its purchases and uses. Such permit . . . may be granted . . . in the appropriate factual situation and upon the carrier's compliance with the requirements and procedures established . . . for the issuance of a direct payment permit to persons other than omnibus carriers." 20 NYCRR 525.9.

Petitioner is an omnibus carrier as defined in Regulation 525.9(a)(1). Therefore, Petitioner is entitled to a refund or credit, subject to the time limitation set forth in Regulation 525.9(b)(4), of tax paid on the purchase of omnibuses, as defined in Regulation 525.9(a)(2), as well as on purchases of motor fuel, parts, equipment (including radio equipment) and supplies, as listed in Regulation 525.9(b)(2), actually used or consumed on or in omnibuses and maintenance services or repairs actually performed on such omnibuses. The amount of such refund or credit is dependent upon Petitioner's local transit percentage as determined in accordance with section 1119(b) of the Tax Law and Regulation 525.9(b) (3).

Petitioner may apply for a direct payment permit as provided in Regulation 525.9(d).

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The fact that some omnibuses are operated by Petitioner under a contract with Suffolk County in no way alters the tax status of such omnibuses or other property purchased by Petitioner.

DATED: October 7, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau