

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

TSB-A-84(15)S
Sales Tax
April 10, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S840202A

On February 2, 1984 a Petition for Advisory Opinion was received from May Associates, 49 Wilelen Road, Rochester, New York 14624.

The issue raised is whether the purchase of a vehicle, with the intention of leasing the vehicle for consideration as well as applying it to self-use, is exempt from sales tax.

Petitioner states that its primary business activity involves the leasing of recreational vehicles. Petitioner, for a fee, will rent vehicles on behalf of private owners when such vehicles are not in use by the owner. Petitioner states that in the agreements it enters into with the private owner, the owner is responsible for licensing and registration, the cost of servicing, replacement of parts and insurance. Petitioner is responsible for the maintenance of leasing records, reservations, credit verification and collections, maintenance and cleaning, storage, advertising, and the collection of sales tax.

Petitioner also states that the owner's personal use will not exceed 14 days a year (in order to maintain the owner's right to utilize the Federal Investment Tax Credit and Accelerated Cost Recovery Deduction) and that a rental fee would be charged to the owner for his use.

Section 1105(a) of the Tax Law imposes a sales tax on the receipts from every retail sale of tangible personal property unless otherwise excluded or exempt.

Section 1101(b)(4) of the Tax Law defines the term "retail sale," in part, as a "sale of tangible personal property to any person for any purpose other than (A) for resale as such " A purchase for resale would include one for subsequent rental or leasing.

Section 526.6(c) of the Sales and Use Tax Regulations provides, with respect to the resale exclusion, as follows:

"(1) Where a person, in the course of his business operations, purchases tangible personal property or services which he intends to sell, either in the form in which purchased, or as a component part of other property or services, the property or services which he has purchased will be considered as purchased for resale, and therefore not subject to tax until he has transferred the property to his customer."

Only purchases made for the exclusive purpose of resale come within the resale exclusion provided for in section 1101(b)(4) of the Tax Law. Michelli Contracting Corporation, State Tax Commission, TSB-H-83(107)S; Jacobs v. Joseph, 282 A.D. 2d 622. Since the private owner herein does not purchase the vehicle exclusively for rental purposes, such purchase does not come within

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the resale exclusion provided for in Section 1101(b)(4). The fact that the private owner will "charge himself" a rental fee for his own use, through the Petitioner, does not alter the fact that no actual rental transaction has taken place. Therefore, the original purchase of the vehicle constitutes a retail sale and, therefore, the receipts therefrom are subject to the sales tax imposed under Section 1105(a) of the Tax Law, as well as other applicable State or locally imposed sales taxes.

DATED: March 23, 1984

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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