

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

TSB-A-85(25)S
Sales Tax
July 8, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S840807A

On August 7, 1984 a Petition for Advisory Opinion was received from S.T.L. Transport, Inc., P.O. Box 538, Newark, New York 14513.

The issue raised is whether equipment (trucks) used in interstate trucking operations are subject to the sales or compensating use tax.

Petitioner is in the business of transporting commodities from western New York State (Wayne, Monroe & Erie Counties) to New York City. In the course of making its deliveries, Petitioner's vehicles are driven through the states of Pennsylvania and New Jersey before arriving at their destination. Petitioner has been transporting goods under ICC authority and charges rates published in the Interstate Commerce Commission Tariff. It is the Petitioner's contention that its equipment is used in interstate movement and, therefore, not subject to the New York State Sales or Compensating Use Tax.

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 1110 of the Tax Law provides that: "Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state . . . of any tangible personal property purchased at retail. . ." (emphasis added).

Section 1111(b) of the Tax Law provides that: "Tangible personal property, which has been purchased by a resident of New York State outside of this state for use outside of this state and subsequently becomes subject to the compensating use tax imposed under this article, shall be taxed on the basis of the purchase price of such property, provided, however: (1) That where a taxpayer affirmatively shows that the property was used outside such state by him for more than six months prior to its use within this state, such property shall be taxed on the basis of current market value of the property at the time of its first use within this state. The value of such property, for compensating use tax purposes, may not exceed its cost. . ."

On August 31, 1983 the Technical Services Bureau released TSB-M-83(23)S (entitled "Trucking Industry") which stated the Department's policy regarding the application of sales and compensating use tax to purchases of vehicles, parts and repair services by trucking companies. In addressing vehicle purchases where the purchaser takes delivery of the vehicle outside New York State, this memorandum states:

- "a. Purchases. When a trucking company purchases a vehicle which is delivered by the seller or a common carrier at a point outside the State, tax liability is determined based on subsequent vehicle use as follows:
- 1) Tax is due pursuant to Tax Law section 1110 if:
 - a) the vehicle enters the State while not engaged in interstate or foreign commerce, even though the vehicle is thereafter used in interstate or foreign commerce.
 - b) the vehicle enters the State while engaged in interstate or foreign commerce, but is subsequently used to any degree in intrastate commerce or any localized use within New York State.
 - 2) No tax is due on the vehicle if:
 - a) the vehicle is not brought into this State.
 - b) the vehicle enters this State while engaged in interstate or foreign commerce and remains exclusively (100%) in interstate commerce. . ."

The Sales and Use Tax Regulations define the phrase "engaged in interstate or foreign commerce" to mean "the transportation of persons or property for compensation between states or countries. 20 NYCRR 528.9 (a)(5).

Petitioner's trips both begin and end in New York State with the traverse of Pennsylvania and New Jersey being merely incidental to what is otherwise an intrastate journey. Therefore, Petitioner's vehicles are not engaged in interstate commerce within the meaning and intent of the Sales and Use Tax Regulations. Id. This conclusion is mandated by the decision of the court in the case of Callanan Marine v State Tax Commission, 98 AD 2d 555, mot. for lv. to app. den. 62 NY 2d 606. In that proceeding the Court held that certain vessels (scows) were not used in interstate commerce merely because they crossed State lines. The Court stated that to hold such interstate traverse as interstate commerce ". . . would allow carriers to avoid sales and use taxes by the simple expedient of choosing routes for intrastate journeys with an incidental crossing of State lines" Id.

Accordingly, Petitioner is required to pay State and local sales and use tax on its purchase of trucks used in the manner described herein.

DATED: June 11, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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