

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

TSB-A-85(27)S
Sales Tax
July 8, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S840404B

On April 4, 1984 a Petition for Advisory Opinion was received from Anacola Trucking Service, Inc., 31 Kirkwood Avenue, Geneva, New York 14456.

The issue raised is whether the transfer of title to certain vehicles from a dissolved partnership to a corporation, whose stock is owned entirely by the two former partners, is a taxable transaction.

Petitioner is a corporation engaged in municipal refuse collection since 1969. The two sole shareholders of the corporation were partners in a similar business from 1953 to 1981, when the partnership was discontinued. At that time two trash removal trucks were transferred from the partnership to the corporation.

Petitioner states that neither the partnership nor either of the individual partners received any remuneration, monetary or otherwise, for the vehicles, nor did the corporation assume any liability of the partners or the partnership. The corporation did not issue additional stock to its shareholders in exchange for the property conveyed.

Section 526.7 of the New York State sales and use tax regulations defines "Sale, selling or purchase, (a) . . .

(1) The words sale, selling or purchase mean any transaction in which there is a transfer of title or possession, or both, of tangible personal property for a consideration.

(b) . . . The term consideration includes monetary consideration, exchange, barter, the rendering of any service, or any agreement therefor. Monetary consideration includes assumption of liabilities, fees, rentals, royalties or any other charge that a purchaser, lessee or licensee is required to pay."

Regulations Section 526.6(8)(ii) states: "The transfer of property to a corporation, as contribution to capital, at a time other than its organization, without the issuance of stock or other consideration, is not a retail sale."

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Accordingly, if entries on the books of the corporation document the acquisition of the trucks as a legitimate contribution to capital, such transaction is not subject to the tax imposed under Section 1105(a) of the Tax Law because it is a transfer without consideration and therefore not a retail sale within the meaning and intent of regulation sections 526.6 and 526.7.

DATED: June 12, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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