

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

TSB-A-92 (27) S
Sales Tax
March 20, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920127C

On January 27, 1992 a Petition for Advisory Opinion was received from Transervice Lease Corp., 5 Dakota Drive, Lake Success, N.Y. 11042.

The issue raised by Petitioner, Transervice Lease Corp., is whether its receipts from the rental of a yardhorse tractor which is used in combination with a trailer, with a combined weight exceeding 26,000 pounds, qualify for the exemption from sales tax provided under Section 1115(a)(26) of the Tax Law.

Petitioner's yardhorse tractor is used in combination with a trailer with a combined weight of over 26,000 pounds. The vehicle has been registered with the Department of Motor Vehicles. The registrant has been issued a special purpose registration pursuant to Section 401.7.F(a) of the Vehicle and Traffic Law. The vehicle only crosses a local county road and is not intended to go on main highways.

The yardhorse tractor is a full size chassis with a "fifth wheel". The cab is mounted on a platform. The platform is the same width as the chassis. The cab takes up approximately 50% of the platform width and is equipped with headlights, directional lights, dual outside mirrors and a roof mounted revolving yellow/amber light.

Section 1115 of the Tax Law states, in part:

Exemptions from sales and use taxes.--(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(26) Tractors, trailers or semi-trailers as such terms are defined in article one of the vehicle and traffic law. . .provided such vehicle is used in combination where the gross vehicle weight of such combination exceeds twenty-six thousand pounds.

Section 528.26 of the Sales and Use Tax Regulations states, in part:

(a) Exemption. (1) The sale or lease of qualifying vehicles as defined in subdivision (b) of this section. . .are exempt from the sales and use tax.

* * *

(b) Definitions. The following terms shall apply for purposes of this section.

(1) A tractor is a motor vehicle designed and used as the power unit in combination with a semitrailer or trailer, or two such trailers in tandem.

(2) A semitrailer is any trailer which is so designed that when operated the forward end of its body or chassis rests upon the body or chassis of the towing vehicle.

(3) A trailer is any vehicle not propelled by its own power, drawn on the public highways by a motor vehicle (as defined in section 125 of the Vehicle and Traffic Law).

* * *

(6) Qualifying vehicle is a tractor, trailer or semitrailer, provided such qualifying vehicle is used in combination with any vehicles where the gross vehicle weight of such combination exceeds 26,000 pounds.

Section 125 of the Vehicle and Traffic Law defines a motor vehicle as "[E]very vehicle operated or driven upon a public highway. . ."

Section 151-a of the Vehicle and Traffic Law defines a tractor as "[A] motor vehicle designed and used as the power unit in combination with a semitrailer or trailer or two such trailers in tandem. . ."

Section 156 of the Vehicle and Traffic Law defines a trailer as "[A]ny vehicle not propelled by its own power drawn on the public highways by a motor vehicle as defined in section one hundred twenty-five operated thereon. . ."

Section 401 of the Vehicle and Traffic Law states, in part:

1. Registration by owners, a. No motor vehicle shall be operated or driven upon the public highways of this state without first being registered in accordance with the provisions of this article

* * *

7. Registration fees for . . .tractors. . .and certain other motor vehicles

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B. Schedule for tractors.

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2. For each tractor of any weight the annual fee of one dollar and five cents for each one hundred pounds,.

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F. Schedule for certain motor vehicles.

(a) For each road roller, tractor crane, truck crane, power shovel,. . .an annual fee of ten dollars. . . A tractor-trailer combination designed and used as a unit exclusively for the same purpose as a vehicle specifically included in this schedule shall be considered as a single vehicle and registered as a motor vehicle under this schedule rather than as a tractor and trailer separately.

In order to qualify for the exemption from sales and use taxes provided under Section 1115(a)(26) of the Tax Law, a vehicle must fall within the definition of "tractor" as such term is defined under Section 151-a of the Vehicle and Traffic Law and the definition of "motor vehicle" as such term is defined under Section 125 of the Vehicle and Traffic Law.

Because Petitioner's vehicle crosses a county highway the vehicle is considered to be driven or operated on a public highway and thus could meet the definition of a tractor pursuant to Sections 125 and 151-a of the Vehicle and Traffic Law, thereby qualifying for the exemption under Section 1115(a)(26) of the Tax Law. However, as the registrant has chosen to register the vehicle as a special purpose vehicle under Section 401.7.F(a) of the Vehicle and Traffic Law and to not register the vehicle as a "tractor" under Section 401.7.B.2 of the Vehicle and Traffic Law, the vehicle must be considered to be a special purpose vehicle and not a tractor. Accordingly, the vehicle does not qualify for the tax exemption provided under Section 1115(a)(26) of the Tax Law and Petitioner is liable for collecting state and local sales tax on the total receipts from the rental charges to Petitioner's customer.

DATED: March 20, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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