

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

TSB-A-92 (75) S
Sales Tax
November 2, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S920714A

On July 14, 1992, a Petition for Advisory Opinion was received from Kathleen Goode, C.P.A., P.C., 25 Grandview Street, Huntington, New York 11743.

The issues raised by Petitioner, Kathleen Goode, C.P.A., P.C., are:

1. Whether sales tax must be paid to vendors at the pump when purchasing fuel for rental aircraft.
2. Whether a credit for sales tax paid may be claimed for fuel which is re-sold to customers as part of a taxable rental sale.
3. What forms are to be used in connection with purchasing fuel for resale as part of a taxable rental sale, and for reporting and paying sales tax.

A business (hereinafter "Lessor") owns and operates a fleet of aircraft for the purpose of renting the aircraft to customers who are pilots. The customers are charged an hourly rate for the rental of the aircraft. The hourly rate is a "wet" rate which includes fuel and customers take the aircraft with full tanks. Sales tax is charged on the entire rental fee.

Section 1105(a) of the Tax Law imposes tax on "The receipts from every retail sale of tangible personal property, except as otherwise provided ..."

Section 1101(b)(4) of the Tax Law provides, in part, as follows:

(4) Retail sale. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3), (5), (7) and (8) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax ...

(ii) Notwithstanding the provisions to subparagraph (i) of this paragraph, no motor fuel or diesel motor fuel shall be sold or used in this state without payment, and inclusion in the sales price of such motor fuel, of the tax on motor fuel required to be prepaid pursuant to the provisions of section eleven hundred two of this article except where a provision of this article relating to motor fuel or diesel motor fuel

specifically provides otherwise and except in the case of a sale or use subject to tax under section eleven hundred five or eleven hundred ten, respectively, of this article. Provided, however, except for such requirement of prepayment of tax required by section eleven hundred two of this article, the provisions of this subparagraph shall not otherwise modify the meaning of the term "retail sale" as used in this article ...

Section 1120 of the Tax Law provides, in part, as follows:

Sec. 1120. Refunds and credits with respect to motor fuel and diesel motor fuel.--(a) Retail vendor. (1) A vendor of motor fuel or diesel motor fuel who or which is required to collect the taxes imposed by subdivision (a) of section eleven hundred five of this article and any like tax imposed pursuant to the authority of article twenty-nine of this chapter shall be allowed a refund or credit against the amount of tax collected and required to be remitted to the commissioner pursuant to the provisions of section eleven hundred thirty-seven of this article upon the retail sale of motor fuel or diesel motor fuel in the amount of the tax on such fuel prepaid by or passed through to and included in the price paid by such vendor pursuant to the provisions of section eleven hundred two of this article.

(2) A refund or credit shall also be allowed such vendor for the tax prepaid by or passed through to and included in the price paid by such vendor upon any motor fuel or diesel motor fuel pursuant to the provisions of section eleven hundred two of this article if such fuel is sold at retail by such vendor under circumstances where the taxes imposed by section eleven hundred five of this article and pursuant to the authority of article twenty-nine of this chapter are not required by the provisions of this article to be collected and remitted upon receipts from a retail sale thereof.

Accordingly, where fuel is purchased by a wet lessor who rents aircraft and agrees to provide fuel for the aircraft, the purchase of the fuel by the Lessor is a purchase for resale. However, in accordance with Sections 1101(b)(4) and 1105(a) of the Tax Law, the Lessor must pay sales tax on the cost of the fuel to the vendor from whom it purchases the fuel.

The Lessor, pursuant to Section 1120 of the Tax Law, may then claim a credit against the sales tax collected by the Lessor on the "wet" lease for the sales tax paid on the fuel purchased by the Lessor and pumped into the aircraft in connection with the "wet" lease. The Lessor on his sales tax return may take a credit for the prepaid sales tax on the "FF" schedule (Form ST-100.10).

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It is noted that if any portion of the fuel is consumed by Lessor, that such portion is subject to use tax and no credit or refund is allowed on that portion of the prepaid sales tax.

DATED: November 2, 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.