

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

TSB-A-98(54)S
Sales Tax
August 6, 1998

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S980206A

On February 6, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Randy T. Rodecker, Inc., 471 Route 25A, Rocky Point, NY 11778.

The issue raised by Petitioner, Randy T. Rodecker, Inc., is whether sales tax is due on the transfer of motor vehicle registration on three pick-up trucks owned by Petitioner, where transfer of title has not occurred.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner owns three pick-up trucks. The pick-up trucks were registered with the Department of Motor Vehicles in the name of Petitioner. Subsequently, Petitioner transferred the registration of the vehicles to Fence King of Rocky Point, Inc. (hereinafter "Fence King"). Petitioner and Fence King are wholly owned by the same person. Title to the three pick-up trucks is in the name of Petitioner and was never transferred.

Applicable Laws and Regulations

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

* * *

(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. . .

* * *

(5) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume (including, with respect to computer software, merely the right to reproduce), conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor.

Section 1105(a) of the Tax Law provides for the imposition of sales tax on the receipts from every retail sale of tangible personal property, except as otherwise provided.

Section 526.7 of the Sales and Use Tax Regulations provides, in part:

(a) Definition. (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) Consideration. 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.

* * *

(e) Transfer of possession. (1) Except as otherwise provided in paragraph (3) of this subdivision, a sale is taxable at the place where the tangible personal property or service is delivered, or the point at which possession is transferred by the vendor to the purchaser or his designee.

* * *

(4) Transfer of possession with respect to a rental, lease or license to use, means that one of the following attributes of property ownership has been transferred:

- (i) custody or possession of the tangible personal property, actual or constructive;
- (ii) the right to custody or possession of the tangible personal property;
- (iii) the right to use, or control or direct the use of, tangible personal property.

Opinion

In this case, Petitioner transferred motor vehicle registration on three pick-up trucks to Fence King. Title to the three pick-up trucks remained in the name of Petitioner.

Section 1105(a) of the Tax Law imposes sales tax on the receipts from the retail sale of tangible personal property. Under Section 1101(b)(4) of the Tax Law a retail sale is a sale of tangible personal property to any person for any purpose. Section 1101(b)(5) of the Tax Law and Section 526.7(a)(1) of the Sales and Use Tax Regulations define a "sale" to mean a transfer of title or possession

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of tangible personal property for a consideration. Section 526.7(e)(4) of the Sales and Use Tax Regulations provides that possession of tangible personal property is transferred when the right to custody or possession of, or the right to use, tangible personal property is transferred.

Petitioner's transfer of registration of the three pick-up trucks to Fence King indicates a transfer of the right to use these vehicles on the public highways. See Section 20.1 of the Department of Motor Vehicles Regulations (15 NYCRR 20.1). Accordingly, Petitioner's transfer of registration of the pick-up trucks is a transfer of possession under Section 526.7(e)(4) of the Sales and Use Tax Regulations, and would be a sale for purposes of Section 1101(b)(5) of the Tax Law if Petitioner received consideration from Fence King. Under Section 526.7(b) of the Sales and Use Tax Regulations, consideration includes monetary consideration, which includes the assumption of liabilities, fees, rentals or any other charge that a purchaser, lessee or licensee is required to pay.

If the transfer of registration of the three pick-up trucks from Petitioner to Fence King was made for consideration, that transfer would be a sale for sales tax purposes. Therefore, the transfer of registration would be subject to sales tax under Section 1105(a) of the Tax Law if the transfer was a retail sale under Section 1101(b)(4) of the Tax Law, and was not otherwise exempt from tax under Article 28 of the Tax Law.

DATED: August 6, 1998

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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