

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

TSB-A-91 (48)S
Sales Tax
July 3, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910403A

On April 3, 1991, a Petition for Advisory Opinion was received from City of Rochester, 400A City Hall, 30 Church Street, Rochester, New York 14614.

The issue raised by Petitioner, City of Rochester, is whether the services of towing, storage, mailing of certified notification letters to owners and Department of Motor Vehicles searches performed by Petitioner, or its contracted representative, in the removal of vehicles from city streets for violations of the Rochester City Code, the Motor Vehicle Law or accidents or pursuant to arrests are subject to the imposition of sales tax.

Petitioner, from July, 1989 through January, 1991 contracted with Central Auto to operate an auto pound for Petitioner. Petitioner directed Central Auto to tow vehicles to the auto pound to be stored until redeemed by the owners or sold at auction. Petitioner took back the operation of the auto pound on January 22, 1991 due to various breaches of contract by Central Auto.

Vehicle owners must pay a single charge to Petitioner before their vehicles are released from the auto pound. Such charge includes \$55.00 for the towing of the vehicle, storage of \$8.00 to \$8.50 per day, \$2.00 for a certified notification letter and \$6.00 for a Department of Motor Vehicles search.

Section 1105(c)(6) of the Tax Law imposes sales tax upon "(6) Providing parking, garaging or storing for motor vehicles by persons operating a garage (other than a garage which is part of premises occupied solely as a private one or two family dwelling), parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles." (emphasis added)

Section 1116(a)(1) of the Tax Law provides, that:

Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

(1) The state of New York or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services or property of a kind not ordinarily sold by private persons; (emphasis added)

Section 526.5 of the Sales and Use Tax Regulations provides in part as follows:

(a) Definition. The word receipt means the amount of the sale price of any property and the charge for any service taxable under articles 28 and 29 of the Tax Law, valued in money, whether received in money or otherwise. . .

* * *

(e) Expenses. All expenses, including telephone and telegraph and other service charges, incurred by a vendor in making a sale, regardless of their taxable status and regardless of whether they are billed to a customer are not deductible from the receipt.

Example 1: A photographer contracts with a customer to furnish photographs at \$50.00 each in addition to expenses.

The customer is billed as follows:

Photographs (2)	\$100.00
Model fees	60.00
Meals	10.00
Travel	25.00
Props (Flowers)	<u>5.00</u>
	Total due \$200.00
Receipt subject to tax is	\$200.00

Example 2: An appliance repairman charges \$10.00 per hour plus expenses when on a service call. The customer is billed as follows:

3 Hrs. at \$10.00	\$ 30.00
Travel	15.00
Parts	20.00
Meals	<u>5.00</u>
	Total due \$ 70.00
Receipt subject to tax is	\$ 70.00

In the matter of Freidus v. Leary 38 AD2d 919, 329 NYS2d 897, the court held the owner or other person entitled to the possession of an illegally stopped vehicle which has been removed by an authorized police officer or person may be charged with a reasonable cost for removal and storage, payable before the vehicle is released. (emphasis added)

In the matter of Jack W. Miller, Excavating Contractor, Inc. v. State Tax Commission, 516 NYS2d 352, the court held that the taxpayer's service charge for loading gravel, although listed separately from the cost of gravel on the invoice, was subject to sales tax, as an expense passed along to customers as part of the sale price.

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In the matter of Richard C. Penfold, DBA C.I.D. Refuse Service v. State Tax Commission, 494 NYS2d 552, the court held that dumping charges passed on by the operator of the refuse removal service to customers were includable in operator's taxable receipts even though dumping charges per se is a nontaxable receipt, since the disposal was an integral aspect of the removal service and not a separate service arising from a different transaction.

The operation of an auto pound constitutes the operation of a place of business engaged in the providing of storage of motor vehicles pursuant to Section 1105(c)(6) of the Tax Law and in accordance with Freidus v. Leary, *supra*. Moreover, the operation of an auto pound is a kind of service ordinarily sold by private persons. Therefore, pursuant to Section 526.5(a) of the Sales and Use Tax Regulations and Section 1116(a)(1) of the Tax Law, the receipts received by Petitioner, an instrumentality of the State of New York, or its contracted representative for the sales of such service are subject to sales tax.

Pursuant to Section 526.5(a) and (e) of the Sales and Use Tax Regulations and in accordance with the court's decisions in Jack W. Miller, Excavating Contractor, Inc. v. State Tax Commission, *supra* and Richard C. Penfold, DBA C.I.D. Refuse Service v. State Tax Commission, *supra* "receipts" include the charge for any service taxable under Articles 28 and 29 of the Tax Law and all expenses incurred by a vendor in making a sale, regardless of their taxable status. Expenses incurred for towing, certified notification letters, and Department of Motor Vehicles searches are all expenses incurred in conducting the taxable service of storing motor vehicles. Accordingly, the entire charge received by the Petitioner or its contracted representative for the release of the motor vehicle from the auto pound is subject to sales tax.

DATED: July 3, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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