

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

TSB-A-95 (10) C
Corporation Tax
July 13, 1995

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C950207A

On February 7, 1995, a Petition for Advisory Opinion was received from We Care Transportation, Inc., 2950 Seneca Street, West Seneca, New York 14224.

The issue raised by Petitioner, We Care Transportation, Inc., is whether it is classed as conducting a taxicab or omnibus business for the purposes of sections 183 and 184 of Article 9 of the Tax Law.

Petitioner is a New York corporation which was incorporated on January 9, 1984. Petitioner was issued, by the New York State Commissioner of Transportation, a certificate of public convenience and necessity to operate a common carrier of passengers for the transportation of handicapped persons, in vehicles with an adult seating capacity not to exceed twenty passengers, exclusive of the driver, pursuant to arrangements with individuals or third parties, between all points in Erie County. Petitioner is required, by the New York State Department of Motor Vehicles, to comply with the special requirements for bus drivers contained in Article 19-A of the Vehicle and Traffic Law.

Petitioner owns and uses a fleet of vehicles or vans which have been remodeled to accommodate the wheelchairs used by its handicapped passengers. The vans have an average seating capacity of five wheelchairs, with the exception of one van, which has a seating capacity of ten.

Petitioner has an agreement with the Department of Social Services which regulates the fees that Petitioner may charge for its services. The agreement provides that Petitioner will charge \$26.00, one way, within the City of Buffalo, plus a limit of \$1.50 per mile outside of the City of Buffalo. There are also limitations on charges for additional passengers. If a trip is from one suburb to another suburb, the fee is the base rate of \$26.00 or mileage, whichever is greater. For trips that originate in the suburbs but necessitate travel into the City of Buffalo, the fee is the base rate of \$26.00, plus mileage. Petitioner is authorized to charge the above specified rates by the Department of Transportation, and may not vary the rates without the Department of Transportation's prior approval.

Section 209.1 of Article 9-A of the Tax Law imposes an annual franchise tax on a domestic corporation for the privilege of exercising its corporate franchise. Section 209.4 of the Tax Law, provides that corporations liable to tax under sections 183 and 184 of Article 9 of the Tax Law are not subject to tax under Article 9-A.

Sections 183 and 184 of Article 9 of the Tax Law impose franchise taxes on a domestic corporation formed for or principally engaged in the conduct of a taxicab or omnibus business. However, sections 183.1(c) and 184.2(a) of the Tax Law, respectively, provide that during the period that the New York State tax on motor fuel, computed without regard to any reimbursement allowable under section 289-c.3(d) of the Tax Law, exceeds two cents per gallon, corporations classed as "taxicab" and omnibus", other than corporations described in sections 183.9 and 184.2(b) of the Tax Law, respectively, shall be taxed under the provisions of Article 9-A of the Tax Law.

Sections 183 and 184 of the Tax Law do not contain any guidance for classing a corporation as a "taxicab" or an "omnibus" However, since the exemption described in sections 183.1(c) and 184.2(a), respectively, is dependent on the New York State tax on motor fuel (Article 12-A of the Tax Law) exceeding two cents per gallon, it is appropriate to look for guidance in Article 12-A of the Tax Law.

Section 282.10 of Article 12-A of the Tax Law, added by the Laws of 1959, Chapter 711, and amended by the Laws of 1961, Chapter 169, defines "taxicab licensee" as every corporation, company, association, partnership and person engaged in operating a taxicab, as defined in section 148-a of the Vehicle and Traffic Law, and licensed by local authorities as defined in section 122 of the Vehicle and Traffic Law to operate at a fixed rate of fare.

Section 148-a of the Vehicle and Traffic Law defines "taxicab" as every motor vehicle, other than a bus, used in the business of transporting passengers for compensation, and operated in such business under a license or permit issued by a local authority.

Herein, Petitioner is not licensed by a local authority. Petitioner's vehicles are not "taxis" and Petitioner is not a "taxicab licensee" for purposes of section 282.10 of Article 12-A of the Tax Law.

Section 282.9 of Article 12-A of the Tax Law, added by the Laws of 1959, Chapter 641, defines "omnibus carrier" as every person engaged in operating an omnibus line subject to the supervision of the New York State Department of Public Service pursuant to Article 3-A of the Public Service Law (now under the supervision of the Commissioner of Transportation) including every person operating omnibuses used for the transportation of school children under a contract made pursuant to the provisions of the Education Law.

Prior to March 1, 1971, an "omnibus carrier", as defined in section 282.9 of Article 12-A of the Tax Law, was under the supervision of the Department of Public Service pursuant to Article 3-A of the Public Service Law. Such Article was repealed by Chapter 267 of the Laws of 1970 when the Commissioner of Transportation took over such supervision.

While omnibus carriers were under the supervision of the Department of Public Service, section 2.29 of the Public Service Law, as added by Chapter 531 of the Laws of 1931, and in effect until repealed in 1970, stated that the term "omnibus corporation" when used in the Public Service Law, "includes every corporation, company, association, joint-stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, leasing or operating or proposing to own, lease or operate an omnibus line.

Section 2.28 of the Public Service Law, as amended by Chapter 633 of the Laws of 1955, in effect until repealed in 1970, defined the term "omnibus line" when used in the Public Service Law, as "a motor vehicle or motor vehicles, including trackless trolleys as defined in the vehicle and traffic law, operated for the use and convenience of the public, usually along the same route or between stated termini, or on a fixed or stated schedule, carrying passengers for hire, and the property and equipment used in connection therewith."

Currently, Article 7 of the Transportation Law, contains the provisions for carriers of passengers by motor vehicles. Pursuant to Article 7 of the Transportation Law, Petitioner was issued a certificate of public convenience and necessity to operate as a common carrier of passengers for the transportation of handicapped persons, in vehicles with an adult seating capacity not to exceed twenty passengers, exclusive of the driver, pursuant to arrangements with individuals or third parties, between all points in Erie County. Petitioner has an agreement with the Department of Social Services with respect to the fees that Petitioner may charge for its services. Additionally, pursuant to Article 7 of the Transportation Law, Petitioner's rates are approved by the Commissioner of Transportation and Petitioner may not change the rates charged for such transportation without the prior approval of the Department of Transportation.

There is no definition of "omnibus" or "omnibus carrier" in the Transportation Law, but Petitioner is a carrier of passengers by motor vehicles and is regulated by the Department of Transportation under Article 7 of the Transportation Law. Further, Petitioner would have been an "omnibus corporation" for purposes of section 2 of the Public Service Law when it was in effect.

Chapter 1081 of the Laws of 1960 amended sections 183 and 184 of the Tax Law, respectively, to provide that during the period that the New York State tax on motor fuel exceeds two cents per gallon, corporations classed as omnibus shall be taxed under the provisions of Article 9-A rather than sections 183 and 184 of the Tax Law. The memorandum in support of the Laws of 1960, Chapter 1081, states, in part, that:

[the] consolidation, with respect to [omnibus] corporations, of all State taxes in [Article 9-A] results in a more equitable and simplified method of taxation...

The substitution of [Article 9-A] for the existing combination of taxes on omnibus corporations involves some measure of tax relief to corporations in a generally depressed industry which daily provides essential transportation services to millions of residents of our State. At the same time it assures a fair contribution from those firms operating on profitable basis. Subject as they are to strict rate regulation, it is in the public interest to afford these marginal corporations relief from governmentally imposed costs which would eventually be passed on to the consumer of the services (NY Legis Ann, 1960, p 590)

Pursuant to the memorandum in support of Chapter 1081 of the Laws of 1960, the exemption from taxation under sections 183.1(c) and 184.2(a) of the Tax Law is applicable to an omnibus corporation that is subject to strict rate regulation.

Herein, Petitioner meets the definition of "omnibus carrier" contained in section 282.9 of Article 12-A of the Tax Law.

Section 410.2(m)(2) of the Motor Fuel and Diesel Motor Fuel Tax Regulations ("Motor Fuel Tax Regulations"), promulgated in 1988, defines "omnibus" as every motor vehicle, with a seating capacity of more than seven persons in addition to the driver, used in the business of transporting passengers for hire. Such term does not include a taxicab.

Petitioner does not meet the definition of "omnibus" contained in section 410.2(m)(2) of the Motor Fuel Tax Regulations which restricts an omnibus, for purposes of the tax on motor fuel, to a motor vehicle with a seating capacity of more than seven persons, in addition to the driver. However, such restriction is not contained in section 282.9 of Article 12-A of the Tax Law, nor in Article 7 of the Transportation Law.

Petitioner is regulated by the Department of Transportation and Petitioner's rates are set in agreement with the Department of Social Services and approved by the Department of Transportation. Because of such strict rate regulation, it is appropriate to class Petitioner as an "omnibus" for purposes of sections 183 and 184 of the Tax Law, even though Petitioner's vehicles do not conform to the definition of omnibus for purposes of the Motor Fuel Tax Regulations.

Accordingly, for purposes of sections 183.1(c) and 184.2(a) of the Tax Law, Petitioner is not classed as a "taxi", but is classed as an "omnibus" and during any period that the New York State tax on motor fuel, computed without regard to any reimbursement allowable under section 289-c.3(d) of the Tax Law, exceeds two cents per gallon, Petitioner is taxed under the provisions of Article 9-A of the Tax Law rather than under section 183 and 184 of the Tax Law.

DATED: July 13, 1995

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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