

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-09(1)M
Highway Use Tax
January 15, 2009

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M080930A

A petition received September 30, 2008 from [REDACTED], requests an advisory opinion about whether its transportation of certain property is exempt from the Highway Use Tax (“HUT”) imposed under Article 21 of the Tax Law. We conclude that Petitioner’s vehicles that are properly authorized and used exclusively to transport household goods on New York State public highways are exempt from HUT. For purposes of this exemption, the definition of “household goods” under federal law is applicable.

Petitioner is an interstate motor carrier that transports household goods and other items for a fee. A highway use tax applies to the privilege of operating any vehicular unit upon the public highways of New York State. (Tax Law § 503.1). Any vehicular unit, however, may be exempt from HUT if the vehicle is used exclusively in the transportation of household goods (as defined by the Commissioner of Transportation of this state or the Interstate Commerce Commission [“ICC”]) by a carrier under authority of the Commissioner of Transportation of this state or the ICC. (Tax Law § 504.5).

The Interstate Commerce Commission Termination Act of 1995 (“ICCTA”) terminated the ICC. (49 U.S.C.A §§ 10101, et seq.). The ICCTA also transferred the governmental responsibilities pertinent to the regulation of household goods carriers to the United States Department of Transportation’s Surface Transportation Board (“STB”). The STB subsequently transferred to the Federal Motor Carrier Safety Administration STB’s authority to determine whether a trucking company qualifies as a “household goods carrier.” (Petition for Declaratory Order—Household Goods Carriers’ Bureau Committee, STB Docket No. 42055 [STB served July 13, 2001]). Further, the ICCTA defines “household goods” as:

personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is—

- (A) arranged and paid for by the householder, except such term does not include property moving from a factory or store, other than property that the householder has purchased with the intent to use in his or her dwelling and is transported at the request of, and the transportation charges are paid to the carrier by, the householder; or
- (B) arranged and paid for by another party. (49 U.S.C.A. § 13102[10]).

While the New York State Transportation Law contains a definition of “household goods¹,” the Tax Law does not reference that definition. Rather, the HUT exemption provides that vehicles that are properly authorized

¹ New York State Transportation Law section 2.15(a) defines “household goods” as:

and used exclusively in the transportation of “household goods,” as defined by the New York State Commissioner of Transportation and the ICCTA, are exempt from HUT. The New York State Commissioner of Transportation takes the position that the ICCTA preempts the definition of “household goods” in New York State Transportation Law sections 2.15(b), (c). (U.S. Const. art. VI, § 2, see Howlett v. Rose, 496 U.S. 356, 371 [1990], quoting Mondou v. New York, N.H. & H.R. Co., 223 U.S. 1, 57 [1912] [When Congress adopts an act it speaks “for all the people and all the States, and thereby establishe[s] a policy for all. That policy is as much the policy of [the State] as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the State”]). The items described by New York State Transportation Law section 2.15(a), however, qualify for the “household goods” definition provided by the ICCTA. As a result, Petitioner’s vehicles that are properly authorized and used exclusively to transport property that qualifies as “household goods” under New York State Transportation Law section 2.15(a) and the ICCTA are exempt from HUT under Tax Law section 504.5.

DATED: January 15, 2009

/S/

Jonathan Pessen
Director of Advisory Opinions
Office of Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.

(a) personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling and such other similar property as the commissioner may provide by regulation; except that this paragraph shall not be construed to include property moving from a factory or store, except such property as the householder has purchased with intent to use in his or her dwelling and which is transported at the request of, and the transportation charges paid to the carrier by, the householder.