

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

TSB-A-87 (1) M  
Highway Use Tax  
March 16, 1987

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. M861217A

On December 17, 1986, a Petition for Advisory Opinion was received from John's Mobile Home Service, Inc., 2771 Lincoln Highway, E., Ronks, Pennsylvania 17572-0219.

The issue raised is the classification of mobile home toters as either trucks or tractors for purposes of the highway use tax imposed under Article 21 of the Tax Law.

Petitioner describes its mobile home toters as single axle vehicles with an average weight of 12,500 lbs., designed solely to transport (pull) mobile homes. Petitioner states that in the majority of cases, the mobile home toters are loaded only when making deliveries, returning to their terminal unloaded. Petitioner's inquiry relates to the period October, 1983 to June, 1986.

Petitioner wishes to characterize its mobile home toters as "trucks" pursuant to the treatment afforded to tow trucks under Article 21 of the Tax Law.

Section 503 of the Tax Law imposes a highway use tax for the privilege of operating any vehicular unit upon the public highways of this state. Effective October 1, 1984, the term "vehicular unit" means "a motor vehicle alone or in combination with another motor vehicle, trailer, semi-trailer, dolly or other device drawn thereby." Tax Law 501.3. For periods prior to October 1, 1984, the term "vehicular unit" meant "a motor vehicle or any combination of motor vehicles operated as a unit." Tax Law 501.3.

Effective October 1, 1984, the term "motor vehicle" includes "any automobile, truck, tractor or other self-propelled device, having a gross weight in excess of eighteen thousand pounds, or any truck having an unloaded weight in excess of eight thousand pounds, or any tractor, having an unloaded weight in excess of four thousand pounds, which is used upon the public highways otherwise than upon fixed rails or tracks." Tax Law 501.2(a). For periods prior to October 1, 1984, the term "motor vehicle" included "any automobile, truck, tractor or other self-propelled device, having a gross weight, alone or in combination with any other motor vehicle, in excess of eighteen thousand pounds, and any trailer, semi-trailer, dolly, or other device drawn thereby and having a gross weight, alone, or in combination with any other motor vehicle, in excess of eighteen thousand pounds, or any truck having an unloaded weight in excess of eight thousand pounds, or any tractor, having an unloaded weight in excess of four thousand pounds which is used upon the public highways otherwise than upon fixed rails or tracks." Tax Law 501.2.

Accordingly, for the entire period in question, Petitioner's mobile home toters were taxable vehicular units for purposes of Article 21 of the Tax Law.

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Section 503 of the Tax Law sets forth various methods for the computation of the tax due under Article 21 of the Tax Law. Different provisions apply to "tractors" and to "trucks."

Regulation section 470.2(c) provides:

(c) A tow truck pulling a disabled motor vehicle is not deemed to be operating in combination with such motor vehicle. Therefore, if the unloaded weight of the tow truck is 8,000 pounds or less, it is not a motor vehicle. However, if the unloaded weight of the tow truck exceeds 8,000 pounds, it is a motor vehicle. 20 NYCRR 470.2.

Inasmuch as a mobile home toter is not a "tow truck pulling a disabled motor vehicle", the provisions of regulation section 470.2(c) are not applicable to Petitioner.

Regulation section 470.3 provides:

Definition of tractor. For purposes of this Subchapter, the word tractor means a self-propelled vehicle used for drawing other vehicles and not primarily constructed to carry a load independently. For example, a vehicle which is principally used for drawing other vehicles is a tractor, even if it is equipped with a rack enabling it to independently carry a load. 20 NYCRR 470.3.

Accordingly, since Petitioner's mobile home toters are designed solely to pull mobile homes and are not primarily constructed to carry a load independently, such mobile home toter are "tractors" for purposes of Article 21 of the Tax Law.

DATED: March 16, 1987

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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