

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

TSB-A-95 (2)M  
Miscellaneous Tax  
October 6, 1995

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M950525A

On May 25, 1995, a Petition for Advisory Opinion was received from MARCOR of New York, Inc., P.O. Box 1043, Hunt Valley, Maryland 21030.

The issues raised by Petitioner, MARCOR of New York, Inc., are:

1. Whether for purposes of the Highway Use Tax when computing the truck mileage tax using the gross weight method, are miles traveled by a motor vehicle that is transporting Petitioner's own equipment and/or supplies considered to be laden miles.
2. Whether for purposes of computing the truck mileage tax using the gross weight method, are miles traveled by a motor vehicle that is transporting hazardous or regulated waste for a customer considered to be laden miles.
3. Whether the New York State Highway Use Tax Regulations define the term "load" for purposes of computing the truck mileage tax on laden miles when using the gross weight method, to mean the same as the ICe's definition of "property."
4. Whether equipment that is permanently mounted to a truck is considered a "load" when computing the truck mileage tax using the gross weight method.

Petitioner is an environmental contracting firm. Petitioner carries its own equipment and/or supplies such as HEPA vacuums, respirators, tools, poly sheeting, etc. on its trucks going to and from job sites. Moreover, Petitioner carries hazardous or regulated waste which has no economic value and is destined for disposal. Petitioner has trucks with equipment permanently mounted to the chassis such as drill rigs and industrial safe-vac loaders. The safe-vac loader is a large vacuum used to vacuum up gravel, soil, etc. The safe-vac loader does not transport the materials that it vacuums up.

Section 501.4 of the Tax Law defines the term "gross weight" to mean "the unloaded weight of the motor vehicle plus the unloaded weight of the heaviest motor vehicle, trailer, semitrailer, dolly or other device to be drawn by such motor vehicle (determined in a manner similar to the method for determining the unloaded weight of a motor vehicle) plus the weight of the maximum load, exclusive of the weight of the driver and his helper, to be carried or drawn by such motor vehicle."

Section 501.7 of the Tax Law defines the term "unloaded weight" to mean "the actual weight of the motor vehicle, which includes all equipment necessary for the performance of the function of

the vehicle as a vehicle, necessary for the safety of the vehicle, permanently attached to the vehicle, used exclusively for the protection of the load carried by the vehicle or used exclusively for the loading or unloading of the vehicle.

Section 472.6 of the Truck Mileage and Fuel Use Taxes Regulations provides as follows:

472.6 Determination of unloaded weight. (Tax Law § 501, subd. 7) (a) As heretofore indicated, every truck having an unloaded weight of more than 8,000 pounds and every tractor having an unloaded weight of more than 4,000 pounds is required to have a permit, if the carrier elects the unloaded weight method of computing the tax (see § 481.9, *infra*). It is necessary, therefore, to determine the meaning of "unloaded weight."

(b) The unloaded weight of the motor vehicle is the actual weight of the vehicle plus the following equipment:

- (1) all equipment necessary for the performance of the function of the vehicle as a vehicle;
- (2) all equipment necessary for the safety of the vehicle;
- (3) all equipment permanently attached to the vehicle;
- (4) all equipment used exclusively for the protection of the load carried by the vehicle; and
- (5) all equipment used exclusively for the loading or unloading of the vehicle.

(c) The following equipment is therefore included in the unloaded weight:

- (1) oil pumps used on trucks for delivering gasoline and oil;
- (2) hoists on dump and coal trucks;
- (3) transit concrete mixers;
- (4) tool boxes;
- (5) oil, gasoline, diesel and other fuel and water in attached receptacles ordinarily provided by the manufacturer for such purposes;
- (6) tires, including spare tires;
- (7) icing units on refrigerator trucks;
- (8) pads, quilts, excelsior, planks, rollers, etc.

(9) skid chains.

With respect to issue "1", pursuant to Sections 501.4 and 501.7 of the Tax Law and Section 472.6 of the Truck Mileage and Fuel Use Taxes Regulations, the transportation of Petitioner's own equipment and supplies to and from job sites would be considered laden miles when computing the truck mileage tax using the gross weight method unless such equipment and supplies are part of the "unloaded weight" of the motor vehicle (i.e., are either necessary for the performance of the function of the vehicle as a vehicle, for the safety of the vehicle, are permanently attached to the vehicle, used exclusively for the protection of the load being carried by the vehicle, or used exclusively for the loading or unloading of such vehicle). Therefore, Petitioner's drill rigs and industrial safe-vac loaders that are permanently mounted to the motor vehicles would be considered part of the unloaded weight of the motor vehicle.

Concerning issue "2", there is no exemption for the transportation of hazardous or regulated waste material. Therefore, since the hazardous or regulated waste material is not part of the unloaded weight of the motor vehicle, pursuant to Sections 501.4 and 501.7 of the Tax Law and Section 472.6 of the Truck Mileage and Fuel Use Taxes Regulations, the transportation of such waste for a customer would be considered laden miles traveled by Petitioner's motor vehicle.

With respect to issue "3", Sections 501.4 and 501.7 of the Tax Law and Section 472.6 of the Truck Mileage and Fuel Use Taxes Regulations are relied on to determine laden and unladen miles when computing the truck mileage tax using the gross weight method. There is no connection with any ICC definitions.

As for issue "4", pursuant to Section 501.7 of the Tax Law and Section 472.6 of the Truck Mileage and Fuel Use Taxes Regulations, equipment that is permanently attached to a motor vehicle is included in the unloaded weight of the motor vehicle. Therefore, such permanently attached equipment is not considered "a load." Thus, when the motor vehicle is transporting only equipment that is permanently attached, the miles traveled are considered unladen miles for purposes of computing the truck mileage tax using the gross weight method.

DATED: October 6, 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.