

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

TSB-A-81 (24) S
Sales Tax
TSB-A-81 (5) C
Corporation Tax
August 27, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. Z810506B

On May 6, 1981, a Petition for Advisory Opinion was received from Joseph Bucciero Contracting, Inc., 15 Smith Avenue, Troy, New York 12180.

The issues raised are:

- 1) whether a change in the principal business activity of Petitioner from trucking and transportation services to truck leasing would necessitate a change in the tax classification of the corporation from a corporation subject to tax under sections 183 and 184 of Article 9 of the Tax Law to one subject to tax under Article 9-A of the Tax Law,
- 2) whether Petitioner must file two tax returns, a CT-183/184 (Article 9) return and a CT-3 (Article 9-A) return for the 1981 tax year, and
- 3) whether the rental by Petitioner of trucks to a subsidiary corporation, a related corporation or to a related individual is subject to sales tax.

Petitioner was incorporated in this state pursuant to the provisions of the New York Business Corporation Law. During the 1981 calendar year, its principal business activity was changed from the operation of trucks to the leasing of trucks both with and without drivers.

I. Section 183 of the Tax Law provides, in part, as follows:

"For the privilege of exercising its corporate franchise or of holding property in this state every domestic corporation . . . formed for or principally engaged in the conduct of . . . trucking . . . business . . . and every other domestic corporation . . . principally engaged in the conduct of a transportation . . . business . . . shall pay, in advance, an annual tax to be computed upon the basis of the amount of its capital stock during the preceding year. . . ."

Section 184 of the Tax Law provides, in part, as follows:

"Every corporation . . . formed for or principally engaged in the conduct of . . . trucking business . . . and every other corporation . . . formed for or principally engaged in the conduct of a transportation . . . business . . . shall pay for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity in this state, an excise tax or license fee which shall be equal to three-quarters of one per centum upon its gross earnings from all sources with this state"

TSB-A-81 (24) S
Sales Tax
TSB-A-81 (5) C
Corporation Tax
August 27, 1981

It has been held that the leasing of vehicles with drivers is the conduct of a transportation business subjecting the corporation doing such a business to tax under sections 183 and 184 of Article 9 of the Tax Law. (People ex rel. Peter J. Curran Funeral Service Co. v. Graves, 1939, 257 App. Div. 888, 12 N.Y.S. 2d 153).

Accordingly, if Petitioner's receipts during the period of 198] in which it engages in leasing are principally (more than 50%) derived from leasing trucks with drivers then Petitioner will remain subject to tax under sections 183 and 184 of Article 9 of the Tax Law for such period, and will not be subject to tax under Article 9-A of the Tax Law. In such event, Petitioner should file a report on form CT-183/184 for the entire 1981 tax year.

If more than 50% of Petitioner's receipts during the period of 1981 in which it engages in leasing are from the leasing of trucks without drivers, Petitioner will be reclassified as a corporation subject to tax under Article 9-A effective as of the date on which it ceases operations as a trucking business and begins functioning as a truck leasing business. In that event, Petitioner will be required to file a report on form CT-183/184 and to compute a tax under section 184 of the Tax Law for the period January 1, 1981 to the date on which Petitioner ceases to do a trucking business. Petitioner is also required to file a report and to pay tax under Article 9-A of the Tax Law for the balance of the year.

Since the tax imposed under section 183 of the Tax Law is an annual tax paid in advance, Petitioner should have already paid the tax imposed by section 183 for the 1981 tax year during 1980. If Petitioner will not be subject to the tax imposed by section 183 in 1982, no tax will be due under that section during 1981.

II. Petitioner inquires as to whether a sales tax liability will arise were it to lease its trucks to a related corporation, a subsidiary or to an individual.

Section 1105(a) of the Tax Law imposes a sales tax upon:

"The receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1101(b)(4) of the Tax Law defines "retail sale" as:

"A sale of tangible personal property to any person for any purpose. . . ."

Section 1101(b)(5) includes within "sale":

"Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume . . . for a consideration, or any agreement therefor. . . ."

TSB-A-81 (24) S
Sales Tax
TSB-A-81 (5) C
Corporation Tax
August 27, 1981

Accordingly, the rental or leasing of a truck to a related corporation, a subsidiary or to an individual will constitute a retail sale the receipts from which will be subject to tax. Such tax, which must be collected by Petitioner, will be based upon the total amount of the lease payments.

DATED: July 23, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau