

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

TSB-H-80 (104) S
Sales Tax

TSB-H-80 (104) I
Income Tax
June 16, 1980

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

Petition #Z800331B

On March 31, 1980, a Petition for Advisory Opinion was received from the New York Air Brake Co., Starbuck Ave., Watertown, N.Y. 13601.

The issues raised are whether the winner of a compact car awarded by an employer to an employee has to pay the withholding tax and the sales tax immediately.

New York Air Brake Co., employs about 2,000 employees. In an effort to discourage absenteeism, New York Air Brake Co. has been issuing \$50.00 bonuses per quarter to all employees with perfect attendance. Payment of such bonuses was processed through the Company's payroll account and reported as income on the individuals' Wage and Tax Statement. The Company anticipates implementing a new attendance incentive program whereby employees with perfect attendance would be eligible in a drawing for a compact car.

Section 3401(a) of the Internal Revenue Code defines "wages" as ". . . all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash..." unless specifically excepted under section 3401(a) or excepted under section 3402(e).

Section 3402 of the Internal Revenue Code provides for income tax collected at source. Federal Regulation section 31.3402(a)-1(c) provides that if wages are paid in property other than money, the employer should make necessary arrangements to insure that the amount of the tax required to be withheld is available for payment in money.

In 1960, the New York State Personal Income Tax Law was conformed with the Federal Internal Revenue Code by Article 22 of the Tax Law. Many definitions and instructions for New York State are identical to those of the Federal definitions and instructions which are published in the "Employers' Tax Guide", referred to as Federal Circular E.

Any compensation regarded as "wages" for Federal income tax withholding purposes are "wages" for purposes of withholding for New York State income tax unless an allocation or exception is specifically required for New York State purposes.

The transfer of a motor vehicle from an employer to an employee for services performed by an employee for his employer constitutes "wages" for New York State withholding tax purposes to the extent that they constitute "wages" for Federal withholding tax purposes. The employer should make whatever arrangements are necessary to insure that the amount of the tax required to be withheld is available for payment in money.

TSB-H-80 (104) S
Sales Tax

TSB-H-80 (104) I
Income Tax
June 16, 1980

Section 1101(b)(3) of the Tax Law refers to a receipt as "The amount of the sale price of any property ... valued in money, whether received in money or otherwise "

Section 1101(b)(4) defines a retail sale as "A sale of tangible personal property to any person for any purpose, other than (A) for resale "

Section 1101(b)(5) defines a sale as "Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration "

Section 1105(a) imposes a sales tax on "The receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

The transfer of an automobile for a consideration is a sale of tangible personal property within the meaning of the Statute. The Statute requires a tax on sales at retail of tangible personal property. The amount subject to the tax is the receipt as defined in the Statute. The sales tax is a "transaction tax", liability for the tax occurring at the time of the transaction. The tax therefore becomes due at the time of transfer of property.

Accordingly, the transfer of a motor vehicle from an employer to an employee, as additional compensation to the employee, is subject to withholding tax. The withholding tax is due from the employee when the vehicle is transferred to the employee and is required to be remitted for the year in which the compensation is reported on the employee's Wage and Tax Statement.

Further, the transfer of a motor vehicle from an employer to an employee as an additional compensation to the employee, is a sale within the meaning and intent of Article 28 of the Tax Law, and either the cost or fair market value (whichever is higher) of the vehicle is subject to the sales and use tax and is due at the time the vehicle is transferred to the winner.

Dated: June 2, 1980

s/MICHAEL ALEXANDER
Deputy Director
Technical Services Bureau