

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

TSB-A-10(1)S  
Sales Tax  
January 19, 2010

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S091123A

Petitioner [REDACTED] asks whether its rental of funeral cars to funeral homes is subject to sales tax after Tax Law §1105(c)(10) took effect on June 1, 2009.

We conclude that, if Petitioner is renting funeral cars to funeral homes, Petitioner's rentals of the cars continue to be subject to sales tax after Tax Law §1105(c)(10) took effect on June 1, 2009.

**Facts**

Petitioner rents hearses, limousines, and flower cars, with a driver, for a charge, to funeral homes. Petitioner has collected sales tax on those charges.

**Analysis**

The rental of vehicles to funeral directors is a taxable rental of tangible personal property under Tax Law §1105(a), rather than a transportation service. *See* 20 NYCRR 528.8(b)(3). This will be true even in the case where a driver is provided with the vehicle, if the funeral procession is under the direction and control of the funeral director and a transfer of possession of the vehicle takes place. *See David E. Dufresne*, Adv Op Comm T&F, November 4, 1997, TSB-A-97(65)S, Tax Law §1101(b)(5), 20 NYCRR 526.7(e)(4) and (6).

On June 1, 2009 Tax Law §1105(c)(10) took effect which imposes sales tax on transportation services provided in New York by livery service, including limousines, black cars, and certain other motor vehicles, (e.g., community cars or vans) with a driver. Transportation service does not include transportation of persons in connection with funerals. *See* Tax Law §1101(b)(34). The imposition of tax on transportation services by section 1105(c)(10) does not affect the taxable status of rentals of vehicles used to provide transportation services. Rentals of vehicles are subject to sales tax under Tax Law §1105(a). *See Additional Guidance Relating to the Sales Tax on Certain Transportation Services*, TSB-M-09(7)S, and *Sales Tax Imposed on Certain Transportation Services*, TSB-M-09(2)S.

Accordingly, Petitioner's rentals of hearses, limousines, and flower cars to funeral homes are subject to sales tax. *See* Tax Law §1115(a)(7) which provides that purchases of tangible personal property by funeral directors are not purchases for resale and are subject to tax. The taxable status of Petitioner's rentals of vehicles is not changed by the imposition of tax on transportation services by Tax Law §1105(c)(10), which took effect on June 1, 2009. The driver's wages, when separately stated, are excludible from the taxable receipts from the vehicle rental, provided the separately stated wages reflect prevailing wage rates. *See* 20 NYCRR 526.7(e)(6).

It should be noted that rentals of passenger cars (e.g., limousines) in New York are subject to a 6% statewide tax under Tax Law §1160, in addition to the sales tax imposed by section 1105(a). Rentals of passenger cars in the Metropolitan Commuter Transportation District are also subject to a special

supplemental 5% tax under Tax Law §1166-a. *See Special Tax on the Rental of Passenger Cars, N-90-26; Increase in the Special Tax on the Rental of Passenger Cars, TSB-M-09(1)S; Special Supplemental Tax on the Rental of Passenger Cars Within the Metropolitan Commuter Transportation District, TSB-M-09(6)S.* Hearses and flower cars are not passenger cars and their rentals are not subject to these additional taxes. *See David E. Dufresne, TSB-A-97(65)S.*

DATED: January 19, 2010

/S/  
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Jonathan Pessen  
Director of Advisory Opinions  
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