

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

TSB-A-10(39)S
Sales Tax
September 14, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. S100421A

On April 21, 2010, the Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks (1) whether “free” oil changes provided to purchasers of motor vehicles are sold to the purchasers as part of the vehicle purchases; and (2) whether Petitioner’s purchases of tangible personal property for use in providing oil changes may qualify for the resale exemption.

We conclude that the “free” oil changes are provided by Petitioner to certain motor vehicle purchasers as part of the sale price of the vehicle. Accordingly, Petitioner’s purchases of tangible personal property for use in providing those oil changes may qualify for the resale exemption.

Facts

Petitioner owns a car dealership that sells or leases motor vehicles to customers. Petitioner has advertised in print and other media that it offers free oil changes to customers who purchase or lease vehicles for the life of the vehicle. Petitioner provided examples of this advertising. The ads include the language “Free Oil Changes For Life” beneath a picture of the vehicle with the monthly lease price. The fine print beneath the ads includes the following language: “Oil change included in price of vehicle, every 5k miles see dealer for details.”

Petitioner also provided sample customer invoices for the sale of its vehicles which include the following language: “This Transaction includes FREE Oil & Filter Changes Every 5,000 Miles up to 60,000 miles.”

Petitioner states that it is obligated as part of its business plan to supply oil changes at no charge, and that the cost of the oil changes is included in the price of the vehicle.

Analysis

The “free” oil changes provided by Petitioner to customers in connection with Petitioner’s sales or leases of motor vehicles are sold to certain customers for purposes of Article 28 of the Tax Law. Petitioner’s purchases of tangible personal property for use in performing these oil changes may qualify for the resale exemption.

West-Herr Ford, Inc. v Tax Appeals Tribunal of State of New York, 16 AD3d 727 (3d Dept 2005) held that loaner cars furnished by the taxpayer to customers whose cars were being repaired were purchased by the taxpayer for resale because the taxpayer gave written statements to customers upon delivery of a new vehicle declaring that the taxpayer would pay for a loaner car for the customer’s use. In that case the written statements were held to be enforceable. In the present case, it appears that Petitioner provided sales invoices to customers upon the sale or lease of a vehicle which indicate that oil changes every 5,000 miles up to 60,000 miles are included in the transaction price. Accordingly, Petitioner is making sales of the oil changes to those customers, as part of the sale or lease of the vehicle. It should be noted, however, that if the invoice

provided to a customer did not indicate that oil changes were included in the transaction, and neither the sale or lease contract nor any other written document furnished to the customer at the time of sale indicated that oil changes were included, then the “free” oil changes referred to in Petitioner’s advertisements would not be sold to the customer. In that case, oil changes provided to the customer free of charge would be promotional giveaways.

The resale exemption applies to tangible personal property purchased for use in performing services subject to tax under Tax Law §1105(c) if the property becomes a physical component part of the property upon which the services are performed or if the property is actually transferred to the purchaser of the service in conjunction with the performance of the service. Tax Law §1101(b)(4)(i)(B). Accordingly, Petitioner’s purchases of tangible personal property, such as oil and filters, for use in performing the oil changes that are included in the sale or lease of motor vehicles will qualify for the resale exemption, provided the tangible personal property becomes part of the motor vehicle or is actually transferred to the customers in conjunction with the performance of the oil changes. Petitioner’s purchases of tools or supplies that do not become part of the vehicle and are not transferred to customers are retail purchases subject to sales tax under Tax Law §1105(a).

The resale exemption would not apply to Petitioner’s purchases of tangible personal property for use in performing oil changes that are provided to customers free of charge for promotion or advertising purposes. *See* 20 NYCRR §526.6(c)(4). Petitioner should keep records substantiating that tangible personal property purchased for use in performing oil changes are used in connection with oil changes that are included in the sale or lease of a motor vehicle as discussed above, or are otherwise sold for consideration, to a customer. *See* Tax Law, §1135, 20 NYCRR §533.2.

DATED: September 14, 2010

/S/

Jonathan Pessen
Director of Advisory Opinions
Office of Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.