

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

TSB-A-13(23)S
Sales Tax
September 9, 2013

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S101223A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether a livery company must collect sales tax on its charges to customers for its transportation service in three separate scenarios, or whether the exclusion in Tax Law § 1105(c)(10) applies to the livery company's charges.

We conclude that, under the scenarios described, the service provided by a livery company in New York City using an affiliated livery vehicle is not subject to sales tax, even if the livery company had formerly been a black car company that used black cars to provide service. But if a livery company refers its customer's call for service to a black car company and the service is provided using a black car, the service is subject to sales tax, even though the livery company bills its customer for the service.

Facts

1. A livery company has corporate accounts, which it services throughout New York City. On occasion, the livery company has more work than its affiliated livery vehicles can service and thus it refers jobs to black car companies. The livery base receives a request for transportation services from the customer and the livery base dispatches the call to the black car company. The livery base bills and collects the fare from the passenger. The livery base pays the black car company which, in turn, pays its affiliated driver. Must the livery collect sales tax from the passenger?

2. An existing black car company which is subject to, and has been collecting, sales tax, converts its license issued by the New York City Taxi and Limousine Commission (TLC) to a livery base license. All of the vehicles that were affiliated with it as a black car company have complied with all the TLC requirements imposed upon livery vehicles. The former black car - now livery - company continues to service the same customers it had as a black car company. Is the company now exempt from collecting sales tax? If so, what notification, if any, must the company provide the Department that it is no longer a black car base and thus not subject to collecting and remitting sales tax?

3. A livery company purchases the assets of a black car base, including its customer lists, list of drivers and the black car company's name. The livery company changes its name to the black car company name but remains a livery base. All drivers affiliated with the black car company are now affiliated with the livery company and are in compliance with all regulations imposed by the TLC upon livery vehicles. The livery base, using the black car company name it purchased, begins servicing the former black car company's customers. Is the livery company under any obligation to collect sales tax for providing transportation services to the former black car company's customers?

Analysis

Section 1105(c)(10) of the Tax Law imposes sales tax on receipts from every sale, except for resale, of transportation service, whether the charge is paid in this state or out of state so long as the service is provided in this state. As relevant here, Tax Law § 1101(b)(34) defines “transportation service” as the service of transporting, carrying or conveying a person or persons by livery service; whether to a single destination or to multiple destinations; and whether the compensation paid by or on behalf of the passenger is based on mileage, trip, time consumed or any other basis. Livery service means service provided by limousine, black car or other motor vehicle, with a driver, but excluding, in a city of one million or more in this state, an affiliated livery vehicle. Black car means a for-hire vehicle dispatched from a central facility. "Affiliated livery vehicle" means a for-hire motor vehicle with a seating capacity of up to six persons, including the driver, other than a black car or luxury limousine, that is authorized and licensed by the taxi and limousine commission of a city of one million or more to be dispatched by a base station located in such a city and regulated by such taxi and limousine commission; and the charges for service provided by an affiliated livery vehicle are on the basis of flat rate, time, mileage, or zones and not on a garage to garage basis.

Thus, transportation service provided by a black car or limousine is included in the definition and charges for that service are subject to sales tax. However, service provided by an affiliated livery vehicle (AFV) that either begins or ends in New York City is excluded from the definition, and charges for such AFV service are not subject to sales tax. *See Tax Law § 1101(b)(38); Revised Policy Concerning the Application of the Sales Tax Exclusion for Certain Transportation Services Provided by an Affiliated Livery Vehicle in New York City, TSB-M-13(2)S.*

In scenario number 1, a livery base receives a request from one of its customers for transportation service in New York City. The livery base does not have an AFV available to provide the service and decides to refer the call to a black car (BC) base. The livery base then calls the BC base, which dispatches the call to a BC driver affiliated with the BC base. The driver that gets the call picks up the customer in a BC and drives the customer to his/her destination. The livery base bills and collects the fare from its customer, and pays some amount to the BC base that dispatched the driver to provide the service. Because the service was provided using a black car, not an AFV, the service is within the definition of transportation service and is subject to sales tax. As the seller of the transportation service, the livery base must charge and collect sales tax from the customer. Because the livery base is providing a service subject to sales tax, it must register for sales tax purposes, keep records, file returns, remit tax, and do all the other things a sales tax vendor must do under Article 28 of the Tax Law. Section 1134 of the Tax Law requires the livery base to register for sales tax purposes at least 20 days before it provides a taxable transportation service. Note also that that the livery base may purchase the service from the BC base exempt from sales tax as a purchase for resale. In order to do so, the livery base must provide the BC base a properly completed Form ST-120, *Resale Certificate*. Otherwise, the BC base must collect sales tax from the livery base on the charge that the BC base makes to the livery base for that service.

In scenario number 2, a BC base “converts” to a livery base, and the black cars formerly affiliated with the BC base become AFVs and affiliate with the new livery base. The new livery base provides transportation service to customers of the former BC base. Because that new service is provided using AFVs, the service is excluded from the definition of transportation service if the service

either begins or ends in New York City, and the charges for the service are not subject to sales tax. If the former BC base no longer sells any transportation service subject to tax or conducts any business for which it is required to be registered for sales tax purposes with the Tax Department, then it must file a final sales tax return and terminate its sales tax registration. *See, TB-ST-265 Filing a Final Sales Tax Return, and TB-ST-25, Amending or Surrendering a Certificate of Authority.* If the new livery base does not make any taxable sales and does not provide any service subject to sales tax, it need not register with the Tax Department for sales tax purposes. But if the new livery base will refer calls to a BC base, as described in scenario number 1, then the new livery base must register for sales tax purposes at least 20 days prior to referring such calls and otherwise comply with the requirements of Article 28 applicable to vendors of taxable services.

In scenario number 3, a livery company purchases the assets of a BC base, including its customer lists, drivers' list, and name. The livery company then changes its name to be the same as the name of the BC base. The BC drivers formerly associated with the BC base change their affiliations to the livery base, in compliance with all TLC regulations. The livery company, under its new name, provides service to customers of the former BC base. That service, provided by the livery base using its newly affiliated drivers using AFVs, would not be subject to sales tax if the service begins or ends in New York City. However, as in the prior scenarios, if the livery base refers calls to a BC base, the livery base would be required to collect sales tax on its charges to its customers and thus must register for sales tax purposes and otherwise comply with sales tax requirements.

We also note that the livery company's purchase of the assets of the BC base would be a bulk sale, transfer, or assignment under Tax Law § 1141(c). Among other things, § 1141(c) requires the livery company to file Form AU-196.10, *Notification of Sale, Transfer, or Assignment in Bulk* (see also Form TP-153, *Notice to Prospective Purchasers of a Business or Business Assets*) at least 10 days before closing on the purchase of the assets. If the livery company fails to comply with any of the § 1141(c) requirements, it would become liable for any outstanding sales and compensating use tax liabilities owed by the BC base, up to the greater of the purchase price or fair market of the assets purchased, including real property and intangible personal property such as the customer lists, drivers' list, and company name.

DATED: September 9, 2013

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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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.