

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

TSB-A-13(31)S
Sales Tax
September 10, 2013

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S120802A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether the “Transfer Fee,” considered on a standalone basis and paid pursuant to a Transfer Agreement, is subject to New York State sales and use tax, and whether the “Transfer Fee” related to a vehicle that was ultimately purchased by the buyer would be taxable as part of the sales price of the vehicle in New York.

We conclude that the Transfer Fee is not subject to sales and use tax because the fee is charged for the transportation of tangible personal property that is not, by itself, a taxable service, and under the facts provided, the fee is not part of the receipt for the sale of tangible personal property.

Facts

Petitioner buys and sells previously owned motor vehicles. Petitioner’s sales model is based on a non-negotiable stated price (hereafter the “Vehicle Sales Price”) for each motor vehicle. Petitioner maintains business locations in multiple states, and is anticipating opening a store in New York. Customers may purchase previously owned motor vehicles from Petitioner directly at Petitioner’s business locations. Petitioner also maintains a website on which customers with Internet access may view Petitioner’s complete sales inventory on-line.

On occasion, a customer is interested in a vehicle that is not available at Petitioner’s store in the customer’s immediate vicinity. Because most customers are unwilling to purchase a used motor vehicle sight unseen and without a test drive, Petitioner offers the customer the option of having that motor vehicle shipped to another company location of the customer’s choice. This transfer is accomplished under the terms of a specific and separate Vehicle Transfer Agreement (hereafter the “Transfer Agreement”) between Petitioner and the customer. Petitioner charges its customers a Vehicle Transfer Fee (“Transfer Fee”) for this service.

The transfer/shipping process consists of six steps:

1. Customers contact Petitioner’s location most convenient for them: A customer calls one of Petitioner’s locations or submits a Vehicle Transfer Form online. If a customer chooses to submit a form online, an employee of Petitioner will contact the customer to answer any questions about the vehicle, and to ensure that the vehicle meets the customer’s specific needs.

2. Pre-transfer inspection: An employee of Petitioner at the company location having possession of the vehicle inspects the car and provides answers to the customer's questions at no charge to the customer.
3. Confirmation: An employee of Petitioner at the location most convenient for the customer contacts the customer to answer any additional questions and to confirm the customer's order to have the vehicle transferred.
4. Contract: The customer is required to enter into the Transfer Agreement calling for the transfer of the subject vehicle at a stated fee.
5. Payment of the Transfer Fee: If the customer executes the Transfer Agreement, the customer is required either to:
 - bring a check for the full amount of the Transfer Fee to Petitioner's location where the vehicle will be transferred; or
 - pay the Transfer Fee over the phone using the customer's credit card.
6. Reservation & Transfer: Once payment is received, an employee of Petitioner verifies that the vehicle has been reserved and is scheduled for transfer.

It should be noted that the Transfer Agreement relates only to shipping vehicles. No other services are provided in exchange for the Transfer Fee, although the Transfer Agreement does provide that the vehicle will be held at the destination location for inspection by the potential customer for a period of 72 hours. The Transfer Agreement is not dependent upon any other agreement. In particular, the Transfer Agreement is not dependent on the ultimate sale of the vehicle. In fact, the Transfer Agreement states "[t]he Vehicle Transfer Fee in no way is considered a deposit, an installment or payment toward the particular vehicle being transferred."

Indeed, frequently a vehicle that has been transferred is *not* purchased by the customer who executes a Transfer Agreement and has paid the Transfer Fee. In such cases, the Transfer Fee is not refunded. Likewise, if the vehicle is purchased, that purchase is executed under a separate purchase and sale contract which neither refers to, nor incorporates by reference, the Transfer Agreement. The existence of a Transfer Agreement and payment of a Transfer Fee never impacts the sales price of the motor vehicle. In short, if a customer pays a Transfer Fee to view and inspect a vehicle, the Transfer Fee is not deducted from, or considered to be part of, the Vehicle Sales Price.

Analysis

Charges for the transportation of property, except to the extent that the transportation is provided in conjunction with the sale of taxable property or services, are not subject to sales tax. See 20 NYCRR § 526.5(g)(1) and (3). The service of transporting property from one location to another generally is not a service upon which sales tax is imposed. The transportation of a vehicle or equipment (including as an *automobile transporter*) from one location to another by a

company as a private or common carrier of goods, if not otherwise provided in conjunction with the sale, repair, maintenance or storage of the transported property (e.g., flatbedding a classic car to or from a car show, transporting a forklift from one customer facility to another, or transporting a repossessed vehicle), constitutes a nontaxable transportation service. Thus, when a company is providing transportation of equipment or of vehicles capable of being operated pursuant to a Department of Transportation (DOT) certificate and ICC permit as a common carrier or contract carrier of goods by motor vehicle, its charges for those transportation services are not subject to tax. *See* TSB-A-10(25)S. However, transportation and destination charges are taxable when included in the sale of a motor vehicle. *See* Publication 838, *A Guide to Sales Tax for Automobile Dealers*.

Petitioner buys and sells previously owned motor vehicles. Petitioner offers a customer the option of having a vehicle from another one of its locations shipped to a more convenient location, upon payment of a Transfer Fee, for the customer to inspect and test drive the car. In order to have the car shipped, a customer must execute a Transfer Agreement with Petitioner and pay the stated Transfer Fee in advance. The Transfer Agreement clearly states that the “Vehicle Transfer Fee in no way is considered a deposit, an installment or payment toward a particular vehicle being transferred, nor does it create a claim of any kind on the particular vehicle being transferred.” The Transfer Agreement concerns only the shipping of the vehicle solely for the purpose of providing the customer with access to it at a more convenient location for up to 72 hours for inspection.

The Transfer Agreement is an agreement separate from any sales contract for a vehicle, and a customer buying a vehicle does not get a price adjustment or credit for having paid a Transfer Fee for the purchased vehicle. Further, the purchase of any vehicle from Petitioner does not require payment of a Transfer Fee by any customer. Accordingly, we conclude that the Transfer Fee is not subject to sales and use tax, regardless of whether the customer ultimately purchases the transferred vehicle.

DATED: September 10, 2013

/S/

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