

**New York State Department of Taxation and Finance  
Office of Counsel**

TSB-A-17(6)S  
Sales Tax  
May 1, 2017

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S160303A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether the tax imposed on its purchase of ferry boats in the State of New York will be limited to and computed on the first \$230,000 of the consideration paid for the vessel. We conclude that Petitioner’s purchases are eligible for the partial exemption in Tax Law § 1115(jj) for all receipts in excess of \$230,000. Petitioner’s purchases may also be eligible for a refund or credit under § 1119(b), which includes parts, equipment, maintenance, fuel, and lubricants.

**FACTS**

Petitioner supplies ferry service exclusively within the City of New York. Petitioner entered into a contract with the New York City Economic Development Corporation (EDC) to facilitate waterfront, maritime and other transportation development projects through the City of New York. To further this contract, Petitioner will purchase ten or more ferry boats to be used to provide ongoing ferry service to the public on various routes and locations within the City of New York. All of the vessels will be purchased after June 1, 2016. Petitioner will also purchase vessels with a seating capacity of more than 20 passengers for the transportation on water of passengers for hire, pursuant to a contract, franchise or consent between Petitioner and the City of New York or an agency of the City. The rates for Petitioner’s ferry boat service are exclusively regulated by the EDC. In addition, the EDC has the sole discretion to make any adjustment to the base fare charged by Petitioner to its customers pursuant to the Metropolitan Transportation Authority fare listings.

Petitioner asks whether the amount on which sales or use tax is imposed upon the purchase of the ferry boats is limited to \$230,000 of the purchase price or consideration paid for the purchase of each vessel, not including consideration paid for accessories added to or included in the purchase of each vessel such as deck furniture, items of décor, tableware, glassware or cookware (TSB-M-15(2)S). Petitioner also asks whether the taxable first \$230,000 cap includes the items necessary for its normal use. Finally, Petitioner asks about the applicability of the refund or credit under Tax Law § 1119(b).

**ANALYSIS**

Part SS of Chapter 59 of the Laws of 2015 amended the Tax Law to provide an exemption from State and local sales and use tax for receipts or consideration in excess of \$230,000 from the sale of a vessel, including any outboard motor or trailer sold in conjunction with the vessel. *See* Tax Law §1115(jj). This exemption took effect on June 1, 2015.

The price of the vessel for purposes of the \$230,000 cap and the amount in excess of \$230,000 is computed including 1) the price of the vessel itself, including property affixed to the vessel for “its equipping, such as furniture, fixtures, built-in appliances, window coverings, climate control systems, navigation equipment, or entertainment systems” and “property that the vessel is outfitted with at the time of sale that is necessary for its normal operation” 2) the price of any outboard motor sold with the vessel; 3) the price of any trailer sold with the vessel; and 4) any charges by the seller for shipping or delivery. *See* TSB-M-15(2)S.

Petitioner’s vessels were or will be purchased after the effective date of Tax Law § 1115(jj). Therefore, State and local sales and use tax will be computed only on the first \$230,000 of the purchase price or consideration paid for the vessel and the items necessary for its normal operation, as described above. Property that cannot be included in the price or consideration for the vessel for purposes of computing when the \$230,000 cap is reached includes certain accessories such as deck furniture, items of décor, tableware, glassware or cookware or other items not necessary for the normal operation of the vessel. *See* TSB-M-15(2)S.

Petitioner’s vessels also may qualify for a refund or credit under Tax Law § 1119(b), which applies to the sale to or use by a vessel operator “of a vessel with a seating capacity of more than twenty passengers used for the transportation on water of passengers for hire, and of parts, equipment, lubricants, diesel motor fuel, maintenance, servicing or repair purchased and used in the operation of any such vessel by such operator.” In order to qualify for the refund or credit provided by this section, Petitioner’s vessels must be used to provide a local transit service. The amount of refund or credit available will depend on the vessel’s “local transit service percentage.” *See* Tax Law § 1119(b); TSB-M-04(8)S. If eligible, Petitioner can use Form AU-11, *Application for Credit or Refund of Sales or Use Tax*, to apply for a refund under Tax Law § 1119(b) for taxes paid on property or services.

DATED: May 1, 2017

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/S/  
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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.