

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for an Advisory Opinion from [REDACTED] ("Petitioner"). Petitioner is in the passenger car rental business and asks whether its purchase of car repair and maintenance service for cars in its rental inventory are subject to sales and use tax. We conclude that maintenance and repairs of vehicles held exclusively for rental are not taxable.

Facts

Petitioner is engaged in the business of passenger car rentals. Petitioner states that its rental car fleet requires frequent maintenance and occasional repairs. These services are performed by third parties.

Analysis

Tax Law § 1105(c)(3) states that receipts from "[i]nstalling tangible personal property ... or maintaining, servicing or repairing tangible personal property, including a mobile home, not held for sale in the regular course of business" are subject to sales tax. The rental of a vehicle is included in the definition of sale. *See* Tax Law § 1101(b)(5). Thus, Petitioner's inventory of vehicles held for rental are vehicles held for sale in the regular course of business. Petitioner's purchases of vehicle repairs, maintenance parts, and labor are not taxable, as the repair and/or maintenance (including labor) of tangible personal property held exclusively for rental are considered purchases for resale. *See* TSB-A-91(33)S. Form ST-120, *Resale Certificate*, is used by certain purchasers to make purchases of tangible personal property for resale without paying the sales tax. Petitioner should deliver the 3rd party providing the parts or services with a properly completed Form ST-120, *Resale Certificate*, no later than 90 days after the transaction.

DATED: October 20, 2020

/S/

DEBORAH R. LIEBMAN
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.