

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether its eventual sales of hydrogen gas at hydrogen refueling stations in New York State that recharge the fuel tanks of Fuel Cell Electric Vehicles would be subject to sales and use taxes.

We conclude that Petitioner’s sales of hydrogen gas at hydrogen refueling stations located within New York State for this purpose would not be subject to New York State and local sales and use taxes.

Facts

Petitioner intends to establish a hydrogen distribution network using high-pressure hydrogen supply and charging stations in New York to supply vehicles powered by fuel cells. Fuel cell electric vehicles combine hydrogen and oxygen to create a controlled chemical reaction to harness electricity in batteries to run the motor that propels the vehicle. Since they are powered entirely by electricity, fuel cell electric vehicles are considered electric vehicles.

Analysis

Tax Law § 1105(b) imposes a sales and use tax upon the receipt of every sale, other than sales for resale, of gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature. Hydrogen is fuel comprised primarily of molecular hydrogen, stored in either gaseous or liquid state, suitable for use and consumption in the engine of a motor vehicle. The sale of hydrogen generally is subject to tax.

Tax Law § 1102(a) requires every distributor of motor fuel to pay, as a prepayment on account, the tax due on motor fuel that it imports or causes to be imported into this state for use, distribution, storage or sale in the state or produces, refines, manufactures or compounds in this state.

However, Tax Law § 1115(a)(42) exempts the sale of hydrogen for use and consumption directly and exclusively in the engine of a motor vehicle from sales tax. Tax Law § 1115(j) provides that the exemption shall apply to both the tax required to be prepaid pursuant to Tax

Law § 1102 and to the taxes imposed by Tax Law §§ 1105 and 1110. Accordingly, Petitioner's sales of hydrogen fuel in New York State are not subject to sales and use tax.

DATED: October 27, 2020

/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.