

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 asks if one of its models of motor coaches qualifies as an exempt omnibus for sales tax purposes.

We conclude that Petitioner’s motor coach does not meet the length requirement to qualify as an omnibus. Accordingly, its sale to a New York resident purchaser is subject to sales tax.

Facts

Petitioner makes several models of motor coaches. Most of the models it makes meet the criteria for exemption from sales tax as a qualifying omnibus. However, one of Petitioner’s models measures approximately 35 feet in length. Petitioner states that the purchaser of this model meets the criteria of operating the motor coach with a certificate issued by the NYS Department of Transportation or appropriate United States agency. Petitioner further states that it is aware of the criteria for exemption in Form ST-121.1 – *Exemption Certificate for Tractors, Trailers, Semitrailers, or Omnibuses*, which is used to document an exemption from sales tax for a qualifying omnibus that weighs at least 26,000 pounds and measures at least 40 feet in length. Petitioner acknowledges that this model would not qualify for that exemption because it is only 35 feet long. However, Petitioner asks whether there is an exception that would allow this model to qualify as an omnibus for purposes of the sales tax exemption.

Analysis

The receipts from the retail sale of tangible personal property are subject to sales tax unless an exclusion or exemption applies. See Tax Law § 1105(a). A party seeking exemption from tax must overcome the presumption of taxability (see Tax Law § 1132[c][1]) and “must be able to point to an applicable statute and show that [they come] within its terms” *Matter of Grace*, 37 NY2d 193, 197 (1975); see also *Wegmans v. Tax Appeals Tribunal*, 33 NY3d 587 (2019).

Tax Law § 1115(a)(32) exempts the sale of omnibuses “weighing at least twenty-six thousand pounds and measuring at least forty feet in length and parts, equipment and lubricants purchased and used in their operation, provided that such omnibuses are used to transport persons for hire by a carrier operating pursuant to a certificate of authority issued by the New York state commissioner of transportation or by an appropriate agency of the United States....” To qualify for the omnibus exemption, the motor coach must meet the exemption’s weight, length and use requirements. The motor coach at issue measures less than the required minimum 40 feet in length.

Because it does not meet the length requirement, it does not come within the terms of the omnibus exemption and is, therefore, subject to sales tax. Accordingly, Petitioner's sales of its 35-foot motor coach to New York resident purchasers are subject to sales tax.

DATED: August 20, 2024

/s/

MARY ELLEN LADOUCEUR

Principal Attorney

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.