New York State Department of Taxation and Finance

**Taxpayer Services Division
Technical Services Bureau**

TSB-A-88(21)S
Sales Tax
March 2, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION   PETITION NO.S871028A

On October 28, 1987, a Petition for Advisory Opinion was received from M & D Inc., P.O. Box 746, Marlboro, New York 12542.

The issue raised is the correct rate of sales tax imposed upon the sale of a new boat and trailer.

New York Tax Law § 1105(a) imposes a sales tax on the receipts from every retail sale of tangible personal property, except as otherwise provided. Article 29 of the Tax Law authorizes localities within the state to impose sales taxes which are in addition to the state sales tax imposed under § l105(a) of the Tax Law.

Section 525.2(a)(4) of the sales and use tax regulations provides, in part, that "the tax is imposed on the retail sale of tangible personal property and is collected from the person who purchases at retail - the consumer.

Section 1101(b)(4) of the Tax Law defines "retail sale" as "[a] sale of tangible personal property to any person for any purpose other than for resale as such .... "

Section 525.2(a)(3) of the regulations provides, in part, that the sales tax is a destination tax in which the point of delivery or the point at which possession is transferred from the vendor to purchaser controls both the tax incident and the tax rate. Delivery to an agent, representative, employee, or other designee of the purchaser in New York State is a taxable transaction, as transfer of possession from the dealer to the purchaser is actually effected in New York State. (Technical Services Bureau Memorandum, Taxability of Vessels Sold By Boat Dealers, January 11, 1982, TSB-M-82(3)S).

Accordingly, a sale of tangible personal property, such as a boat, delivered or transferred within New York State is ordinarily subject to the sales tax at the rate applicable to the jurisdiction in which delivery or transfer is made.

Section 1214 of the Tax Law states:

(a) Where a sale of a motor vehicle, including an agreement therefor, is made in any city, county or school district to a nonresident thereof, such sale shall not be subject to tax by such city, county or school district, despite the fact that such motor vehicle is delivered to the purchaser within such jurisdiction provided the purchaser furnishes to the vendor, prior to taking delivery, proof satisfactory to the tax commission that the purchaser:

(1)   is a nonresident of the jurisdiction in which the sale is made,

TSB-A-88(21)S
Sales Tax
March 2, 1988

(2)   has no permanent place of abode within such jurisdiction,

(3)   is not engaged in carrying on in such jurisdiction any employment, trade, business or profession in which the motor vehicle will be used in such jurisdiction ..... However, if the purchaser resides in a city, county or school district imposing a tax on the use of such motor vehicle, the vendor shall be required to collect from the purchaser, as provided in section twelve hundred fifty-four, the aggregate compensating use taxes imposed by the city, if any, county and school district in which the purchaser resides ....

(b) ....

(c) For purposes of this section, the term "motor vehicle" shall include a motor vehicle as defined in section one hundred twenty-five of the vehicle and traffic law and a trailer as defined in section one hundred fifty-six of such law.

Accordingly, when Petitioner sells a trailer (as defined in section 156 of the Vehicle and Traffic Law), the appropriate rate of sales and use tax to collect on the trailer is the sales and use tax rate applicable to the jurisdiction in which the purchaser's residence is located.

For additional information regarding the taxability of vessels sold by boat dealers, see Technical Services Bureau Memoranda TSB-M-82(3)S and TSB-M-82(3.1)S.

DATED: March 2, 1988   s/FRANK J. PUCCIA
                                       Director
                                       Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
               are limited to the facts set forth therein.