

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-91 (42)S
Sales Tax
May 17, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910306A

On March 6, 1991, a Petition for Advisory Opinion was received from A-Z Parking Services, Inc., 69-12 Austin Street, Forest Hills, NY 11375.

The issue raised by Petitioner, A-Z Parking Services, Inc., is whether the sales tax imposed upon the sale of service of providing parking, garaging or storing for motor vehicles by persons operating a garage, parking lot or other place of business engaged in providing parking, garaging or the storing of motor vehicles applies to the service of immobilizing vehicles parked without authorization on private property prior to their being towed away unless first redeemed by the vehicle owner or operator.

Petitioner is engaged by owners of various private streets and various commercial establishments to operate a program designed for the purpose of enforcing the property owner's prohibition against unauthorized parking of motor vehicles upon the private property of such owners. Prominent signs inform the public that parking by unauthorized vehicles is prohibited and that offenders are subject to having their vehicles immobilized and/or towed away.

Petitioner sends around on the private streets a "booting" team which, when it discovers an unauthorized parked vehicle, applies an immobilization device called a "boot" to one or two tires of the vehicle, attaches a sticker to the windshield warning that any movement of the vehicle while the boot is attached could damage the vehicle, photographs the vehicle for purposes of defending damage claims and notifies the central office of the immobilization. After a reasonable period of time, if the car owner or operator has not redeemed the vehicle, a licensed towing company is called to remove from the private streets and hold it until redeemed (the charge for which encompasses not only the Petitioner's charge but also the towing fee of the towing company). If prior to the removal by the towing company the vehicle's owner or operator comes to the Petitioner's office to redeem the vehicle, the "booting" team will go to the vehicle and remove the "boot".

Petitioner employs between 10 and 25 full and part-time drivers to perform the "booting" operation. Petitioner maintains, in the near vicinity of one of the private communities it serves, an office that is open and manned at all times when vehicles are "booted" so that the vehicle owner or operator can pay the redemption charge to secure the release of vehicle from the immobilizing device. In the case of other locations, the vehicles owner or operator can telephone the office and a "booting" team will be dispatched to the location to collect the redemption charge and release the vehicle.

Petitioner regularly sends its personnel around to check on the security of "boots" that have been installed on unauthorized vehicles. This is solely because of the numerous instances where the

vehicle operator has endeavored to remove the "boot" by various means including hacksaws, bolt cutters, crow bars and acetylene torches.

Section 1105 of the Tax Law states, in part:

Imposition of sales tax.--. . .there is hereby imposed and there shall be paid a tax. . .upon:

(c) The receipts from every sale, except for resale of the following services:

(6) Providing parking, garaging or storing for motor vehicles by persons operating a garage (other than a garage which is part of premises occupied solely as a private one or two family dwelling), parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles.

Section 1212-A of the Tax Law imposes a tax within any city in the state with a population of over one million upon receipts "from every sale of the service of providing parking, garaging or storing for motor vehicles by persons operating a garage. . . , parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles".

Section 1107(c) of the Tax Law imposes the same sales tax using the same language on behalf of the New York City Municipal Assistance Corporation.

Section 1105(c)(3) of the Tax Law provides, in part, that:

(3) Installing tangible personal property, excluding a mobile home, or maintaining, servicing or repairing tangible personal property, including a mobile home, not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith. . .:

Section 527.5(a) of the Sales and Use Tax Regulations states, in part, that:

(1) The tax is imposed on receipts from every sale of the services of installing, maintaining, servicing or repairing tangible personal property, by any means including coin-operated machines, whether or not any tangible personal property is transferred in conjunction with the services.

(2) Installing means setting up tangible personal property or putting it in place for use.

* * *

(3) Maintaining, servicing and repairing are terms used to cover all activities that relate to keeping tangible personal property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition.

The service of "booting" vehicles, which are parked without authorization on private property does not constitute the sale of service of providing parking, garaging or storing of motor vehicles by persons operating a garage, parking lot or other place of business engaged in providing parking, garaging, or storing of motor vehicles pursuant to Sections 1105(c)(6), 1107(c) and 1212-A of the Tax Law.

However the charge imposed by the Petitioner in the instant case is a fee for the removal of the boot from the vehicle which is tangible personal property. In 1983 Atty Gen [Inf Opns] 83-12 the Attorney General stated that a village may fix a fee to assess the reasonable cost of attaching and removing a boot or locking device which immobilizes a vehicle which is in violation of local parking regulations. Also in the Matter Forest Hills Garden Association and A-Z Parking Services, Inc. v. Bernard D. Baroth, et al., 555 NYS 2d 1000 the court held that the plaintiffs had the right to immobilize unauthorized parked vehicles through the application of a boot, and that the redemption fee of \$95 to remove the boot is a legal, valid and currently reasonable charge. (emphasis added)

Accordingly, pursuant to Section 1105(c)(3) of the Tax Law and Section 527.5(a) of the Sales and Use Tax Regulations the attaching and removing of a boot immobilizing a vehicle is deemed to be the installing, maintaining, servicing and repairing of tangible personal property. Therefore, the receipts from charges or fees for the removal of the boot are subject to the imposition of sales tax.

DATED: May 17, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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