

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

TSB-A-96 (25)S
Sales Tax
May 2, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S951208A

On December 8, 1995, the Department of Taxation and Finance received a Petition for Advisory Opinion from Model Auto Driving School, Inc., 145 West 14th Street, New York, New York 10011.

Petitioner, Model Auto Driving School, Inc., raises the following issues:

1. Whether its purchases of motor vehicles are subject to sales tax.
2. Whether its purchases of motor vehicle parts are subject to sales tax.
3. In the event that Petitioner is required to pay sales tax on either the motor vehicles or the motor vehicle parts, whether Petitioner is entitled to take a credit on its New York State and local sales and use tax return for twenty-five percent (25%) of the sales taxes paid on the motor vehicles and parts.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner is in the business of teaching individuals to drive motor vehicles. The program includes teaching an individual to drive and arranging for the individual to take the written and practical tests to acquire a New York State driver's license. Petitioner charges a fee that includes compensation for the driving lessons and for providing a motor vehicle to take the practical test. Petitioner has allocated seventy-five percent (75%) of its fee to the driving lessons and twenty-five percent (25%) of its fee to providing the motor vehicle.

Petitioner charges, collects and remits New York State and local sales taxes on the fee that is allocated to providing the motor vehicle. Petitioner has always rented the motor vehicles that it provides from other companies and paid sales tax on its rental payments. Petitioner began purchasing motor vehicles on January 1, 1996, for use in its teaching program and will no longer rent motor vehicles from other companies. Petitioner will also purchase motor vehicle parts to repair the motor vehicles that it uses in its program.

Applicable Law

Section 1101(b) of the Tax Law provides in part:

(b) When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(4) Retail sale. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property

(5) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume ... conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor.

(6) Tangible personal property. Corporeal personal property of any nature

Section 1105 of the Tax Law imposes sales tax on:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

Opinion

The Department of Taxation and Finance has long held that fees charged for supplying vehicles to individuals for taking road tests are subject to sales tax. "The supplying of cars for road tests constitutes a license to use or a rental of such cars (Tax Law Section 1101(b)(5)). It is not merely incidental to any instruction the instructor provides immediately preceding the road test" (SALES TAX INFORMATION LETTER NO. 22, Q. 353, August 31, 1966).

Although a "license to use" and a "rental" fall within the definitions of "sale" and, consequently, "retail sale" as set forth in paragraphs (4) and (5) of Section 1101(b) of the Tax Law, only purchases made for the exclusive purpose of resale come within the resale exclusion provided for in Section 1101(b)(4)(see, Matter of Micheli Contracting v State Tax Commn., 109 AD2d 957; Matter of May Associates, Adv Op Comm T&F, March 23, 1984, TSB-A-84(15)S). Because Petitioner uses its motor vehicles to provide driving lessons in addition to providing the motor vehicles for purposes of taking practical tests, the motor vehicles are not purchased exclusively for resale but are instead purchased by Petitioner at retail. The motor vehicle parts are also purchased at retail. Accordingly, Petitioner's purchases of motor vehicles and motor vehicle parts are subject to sales tax.

Sections 1119, 1132 and 1139 of the Tax Law and Part 534 of the Sales and Use Tax Regulations describe situations and transactions in which credits and refunds of sales tax are applicable. There are no provisions in these sections for credits or refunds of sales taxes that are properly paid on the retail sales of motor vehicles and motor vehicle parts if the motor vehicles are

TSB-A-96 (25)S
Sales Tax
May 2, 1996

sometimes rented to third parties. Therefore, Petitioner is not entitled to a credit on its New York State and local sales and use tax return for twenty-five percent (25%) of the sales taxes paid on the motor vehicles and motor vehicle parts.

DATED: May 2, 1996

/s/
Doris S. Bauman
Director
Technical Services Bureau

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