

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

TSB-A-99(29)S  
Sales Tax  
May 19, 1999

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. Z981006C

On October 6, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from "We Care" Transportation, Inc., 401 East Amherst Street, Buffalo, NY 14215. Additional information related to the Petition was received on March 16, 1999.

The issues raised by Petitioner, "We Care" Transportation, Inc., are:

(1) whether omnibuses purchased prior to December 1, 1997, are eligible for the exemption provisions of sections 1115(a)(32) and 1115(u) of the Tax Law; and

(2) if the sales tax paid when such omnibuses were purchased would, based on the provisions of section 1115(a)(32), be refundable: (i) on a pro-rated basis based on the remaining useful life of each omnibus as of December 1, 1997; or (ii) on any other basis.

Petitioner presents the following facts. Petitioner owns several vehicles that were purchased prior to December 1, 1997. Petitioner represents that these vehicles meet the requirements of sections 1115(a)(32) and 1115(u); *i.e.*, such vehicles are "omnibuses" as defined in Article 1 of the Vehicle and Traffic Law, weigh at least 26,000 pounds, measure at least forty (40) feet in length, and are operated pursuant to an appropriate certificate of authority.

**Applicable Law**

Section 126 of Article 1 of the Vehicle and Traffic Law defines the term "omnibus" as "[a]ny motor vehicle used in the business of transporting passengers for hire, except such a motor vehicle used in the transportation of agricultural workers to and from their employment."

Section 1115 of the Tax Law provides, in part:

(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

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(32) Omnibuses, as such term is defined in article one of the vehicle and traffic law, 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 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. . . .

Section 1115(u) of the Tax Law provides, in part:

Receipts from every sale of . . . services . . . to omnibuses, parts, equipment and lubricants exempt from tax under paragraph thirty-two of subdivision (a) of this section shall be exempt from tax under this article. . . .

Sections 1115(a)(32) and 1115(u) were added to the Tax Law by sections 94 and 95, respectively, of Part A of Chapter 389 of the Laws of 1997. Section 219 of such Part A of Chapter 389 provides, in part:

This act shall take effect immediately, provided, that:

\* \* \*

(15) sections ninety-four and ninety-five of this act shall take effect December 1, 1997, and shall apply to sales made, services rendered and uses occurring on or after that date although made, rendered or occurring under a prior contract. . . .

### **Conclusions**

With regard to issue (1) raised by Petitioner, sections 1115(a)(32) and 1115(u) of the Tax Law became effective December 1, 1997, and apply to sales made, services rendered, and uses occurring on or after that date. Therefore, even though the omnibuses in question were purchased prior to the effective date of these provisions and do not themselves qualify for the exemption provided for in section 1115(a)(32), the purchase — on or after December 1, 1997 — of parts, equipment and lubricants used in the operation of the omnibuses would be exempt under section 1115(a)(32) of the Tax Law. Similarly, the receipts from the sale — on or after such date — of services related to parts, equipment and lubricants used in the operation of the omnibuses would be exempt under section 1115(u) of such law.

With regard to issue (2) raised by Petitioner, because the omnibuses themselves were purchased prior to December 1, 1997, such purchases were not exempt under section 1115(a)(32).

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There exist no provisions that would allow a refund under section 1115(a)(32), on a pro-rated basis or otherwise, of the sales tax paid on the purchases of the omnibuses.

DATED: May 19, 1999

/s/  
John W. Bartlett  
Deputy Director  
Technical Services Bureau

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