

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

TSB-H-81 (63) S
Sales Tax
March 30, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800825B

On August 25, 1980, a Petition for Advisory Opinion was received from Lone Star Industries, Inc., One Greenwich Plaza, Greenwich, Conn. 06830.

The issue raised is whether the purchase by a transportation company of certain scows (and of property used by or for the use of such scows) will be exempt from State and local sales and use taxes pursuant to section 1115(a)(8) of the Tax Law, and whether services rendered with respect to such scows will be exempt from such taxes pursuant to section 1105(c)(3) of the Tax Law.

Petitioner proposes to establish a new subsidiary corporation for the sole purpose of transporting aggregates such as crushed stone and sand. Present plans are for this subsidiary to provide transportation services exclusively to NYTR, another subsidiary of Petitioner. Scows (barges) owned by Petitioner's new transportation company will be loaded with aggregates at NYTR's New York plants along the Hudson River and towed through New York and New Jersey waters to NYTR's piers at Weehawken, New Jersey; to NYTR's customers' piers in New Jersey; or to piers in the New York City-Long Island area belonging either to NYTR or its customers. Scows towed to Weehawken will later be towed by the transportation company to NYTR's customers, a majority whom are located in New York State, as directed by NYTR.

It is anticipated that the carriage of aggregates to Weehawken, New Jersey, and the subsequent shipment to NYTR's customers will be the normal method of operation. Direct transportation of a lading from a NYTR facility along the Hudson to its ultimate destination will be much less frequent.

The Weehawken, New Jersey piers will serve as a distribution center for NYTR's products and as a depot from which customers' orders can be filled. The aggregates transported to Weehawken to await shipment to customers will be fungible in nature and NYTR will not necessarily know the ultimate customer for any particular load as it leaves a plant, as happens when NYTR sends a given load to Weehawken to satisfy future orders and there is no customer for the load as it begins transit down the Hudson. The staging of scows and temporary storage of cargoes at the Weehawken piers will be done for NYTR's business purpose of promoting the orderly distribution of its products. That is, it will be at Weehawken that various individual barges are organized into groupings of up to four for ultimate delivery to customers.

Nearly 100% of the trips logged by each scow will entail passage through the waters of a state other than New York, and nearly 100% of the receipts from each vessel will be derived from such activity. In excess of 75% of the trips for hire of each scow will end or begin at the Weehawken, New Jersey piers or will involve direct carriage to NYTR's customers in a state other than New York, and more than 75% of the receipts from each vessel will be derived from such activity. Petitioner states, thus, that in excess of 75% of the receipts earned by each vessel will be derived from trips between ports lying in different states.

JAMES H. TULLY, JR., COMMISSIONER LOUIS M. JACOBSON, DEPUTY COMMISSIONER
FRANK J. PUCCIA, DIRECTOR

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Section 1115(a) (8) of the Tax Law provides for an exemption from sales and use taxes with respect to "Commercial vessels primarily engaged in interstate or foreign commerce and property used by or purchased for the use of such vessels for fuel, provisions, supplies, maintenance and repairs (other than articles purchased for the original equipping of a new ship)."

Section 1105(c) (3) of the Tax Law, which imposes a tax on the receipts from the services of installing tangible personal property or maintaining, servicing or repairing tangible personal property, specifically excludes receipts for "...services rendered...with respect to commercial vessels primarily engaged in interstate or foreign commerce and property used by or purchased for the use of such vessels for fuel, provisions, supplies, maintenance and repairs (other than with respect to articles purchased for the original equipping of a new ship)...."

Section 528.9(a) of the Sales and Use Tax Regulations define certain of the terms used in the above statutory provision as follows:

"...

(2) Vessel. A vessel is any type of floating craft used as a means of transportation on water.

...

(4) Primarily. Primarily means that at least seventy-five percent of the receipts from the vessel's activities are derived from interstate or foreign commerce.

(5) Engaged in interstate or foreign commerce. Engaged in interstate or foreign commerce means that transportation of persons or property for compensation between state or countries.

..." 20 NYCRR 528.9(a)

It is clear that the scows in question are "vessels" as that term is defined in the Regulations cited above. In addition, the scows will be primarily engaged in interstate commerce in that in excess of 75% of the receipts from each vessel's activities will be derived from the transportation of property, for compensation, between NYTR's New York plants and its piers at Weehawken, New Jersey or the piers of customers in New Jersey, and between NYTR's Weehawken, New Jersey piers and piers of NYTR or its customers in states other than New Jersey.

Accordingly, the receipts from the purchase of scows (and the related property described in the statute) used as described above will be exempt from sales tax, and the use thereof will be exempt from the compensating use tax, pursuant to section 1115(a) (8) of the Tax Law. Similarly, the services described in section 1105(c) (3) of the Tax Law and performed with respect to such scows and the related property specified in that statutory provision will be likewise exempt from sales and compensating use taxes.

DATED: March 13, 1981

s/LOUIS ETLINGER
 Deputy Director
 Technical Services Bureau