

Trucking Industry

The following is the policy of the Department of Taxation and Finance regarding the application of sales and compensating use tax to purchases of vehicles, parts and repair services by trucking companies.

I. Vehicles

1. Delivered Within New York State

- a. Purchases. When a trucking company purchases and takes delivery of a vehicle (truck, tractor, trailer) in New York State, appropriate sales and/or use tax is due even though the vehicle is purchased for use in interstate or foreign commerce, unless the trucking company qualifies for exemption as a nonresident pursuant to Tax Law Sections 1117 and 1214 and furnishes the necessary exemption documentation to the seller.
- b. Leases. When a trucking company takes delivery of a leased vehicle (truck, tractor, trailer) in New York State, appropriate sales and/or use tax is due on the first periodic lease payment even though the vehicle is leased for use in interstate or foreign commerce or is immediately removed from the state; unless 1) the trucking company, as lessee, qualifies for exemption as a nonresident pursuant to Tax Law sections 1117 and 1214; or 2) the lease qualifies for exemption pursuant to Tax Law section 1115(a)(22). Subsequent payments required under the lease are subject to tax unless, during an entire lease transaction period (day, week, month or other period): (i) the vehicle is not present or used for any activity within this State or (ii) the leased vehicle is outside New York State at the beginning of such lease transaction period and is not used in any intrastate activity in New York State during that lease transaction period. The lessee is required to pay tax to the lessor, unless an appropriate exemption is determined and proper documentation of such exemption is furnished to the lessor for each such individual lease period. Where tax is paid to the lessor with respect to such subsequent lease periods, the lessee may apply for a refund or credit pursuant to section 1139 of the Tax Law, provided the vehicle either remained outside the state during the entire lease transaction period, or entered the state engaged in and continued in use solely in interstate commerce during such period.

2. Delivered Outside New York State

- a. Purchases. When a trucking company purchases a vehicle which is delivered by the seller or a common carrier at a point outside the State, tax liability is determined based on subsequent vehicle use as follows:

- 1) Tax is due pursuant to Tax Law section 1110 if:
 - a) the vehicle enters the State while not engaged in interstate or foreign commerce, even though the vehicle is thereafter used in interstate or foreign commerce.
 - b) the vehicle enters the State while engaged in interstate or foreign commerce, but is subsequently used to any degree in intrastate commerce or any localized use within New York State.
 - 2) No tax is due on the vehicle if:
 - a) the vehicle is not brought into this State.
 - b) the vehicle enters this State while engaged in interstate or foreign commerce and remains exclusively (100%) in interstate commerce.
 - c) the vehicle enters the State solely to have tangible personal property installed or for repairs, maintenance or servicing. (See Sections II and III below)
 - d) the vehicle is purchased by a nonresident of this State and is subsequently used in this State, for any purpose whatsoever.
- b. Leases. Except as stated below, the preceding principles of taxability apply to leases as well as purchases.
- 1) The vehicle is leased by a trucking company from an owner/operator under circumstances which render the transaction as exempt pursuant to Tax Law section 1115 (a)(22).
 - 2) When a trucking company leases or rents a truck, tractor or trailer, the principles set forth above are applicable to each period for which payment is made or required pursuant to the lease and the determination of taxability must be made for each lease period. (day, week, month, other period)

II. Parts and Accessories

Parts and accessories purchased for installation on vehicles used in interstate and foreign commerce are subject to appropriate sales and/or use taxes when delivered to the purchaser in New York State.

III. Installation, Repairs and Maintenance

When performed within New York State, the services of installing tangible personal property on vehicles or repairing and maintaining such vehicles are subject to tax unless: 1) the services are performed by an employee (as employee) for the owner of the vehicle; or 2) the vehicle, after rendition of such services, is delivered outside the State by the person performing the service or a common carrier and is not subsequently used by a New York resident in intrastate commerce within this State.

When a vehicle has been maintained, serviced or repaired outside New York State (other than by an employee of the owner) and is subsequently brought into this State for use in intrastate commerce, tax is due on the purchase price of such taxable services pursuant to Tax Law section 1110.

IV. Tax Rate

Any vehicle delivered within New York State to a resident* is subject to tax at the rate in effect in locality of the purchaser's place of business. However, additional tax may be due if the vehicle is garaged or principally used in a locality having a higher tax rate.

Vehicles delivered to a resident purchaser outside New York State which subsequently reenter this State for garaging or any degree of intrastate use, become subject to the compensating use tax imposed by Article 28 and pursuant to the authority of Article 29 of the Tax Law. They are likewise taxed at the state rate and the rate for the locality in which they are garaged or principally used. Though a lessor is only required to charge local tax at the rate in effect for the jurisdiction in which the leased vehicle is delivered to the lessee, local tax is required to be paid by the lessee at the rate in effect for the jurisdiction in which the leased vehicle is garaged or principally used during each lease transaction period.

Principal use for local tax purposes means more than 50% of the vehicle's use, determined by the percentage of local miles compared to total New York State miles.

*For definition of resident, see Para V Pertinent Sections of the Tax Law, Article 28 and Article 29, §1117 and 1214.

V. Pertinent Sections of the Tax Law

Article 28

Section 1110 - "Except to the extent that property or services have already or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state . . . of any tangible personal property purchased at retail . . ."

Section 1111 - "(b) Tangible personal property, which has been purchased by a resident of New York state outside of this state for use outside of this state and subsequently becomes subject to the compensating use tax imposed under this article, shall be taxed on the basis of the purchase price of such property, provided, however: (1) That where a taxpayer affirmatively shows that the property was used outside such state by him for more than six months prior to its use within this state, such property shall be taxed on the basis of current market value of the property at the time of its first use within this state. The value of such property, for compensating use tax purposes, may not exceed its cost. (2) That the compensating use tax on such tangible personal property brought into this state . . . and used in the performance of a contract or sub-contract within this state by a purchaser or user for a period of less than six months may be based, at the option of the taxpayer, on the fair rental value of such property for the period of use within this state."

Section 1115 - "(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: . . . (22) The rental or lease of trucks, tractors or tractor-trailer combinations to an authorized carrier, pursuant to a written contractual agreement, for use in the transportation for hire of tangible personal property as augmenting equipment by such authorized carrier, provided that under such rental, lease or license to use, the owner of any such vehicle or any employee of such owner operates such vehicle"

Section 1117 - "(a) Receipts from any sale of a motor vehicle shall not be subject to the retail sales tax imposed under subdivision (a) of section eleven hundred five, despite the taking of physical possession by the purchaser within this state, provided that the purchaser, at the time of taking delivery: (1) is a nonresident of this state, (2) has no permanent place of abode in this state, (3) is not engaged in carrying on in this state any employment, trade, business or profession in which the motor vehicle will be used in this state, and (4) prior to taking delivery, furnishes to the vendor: any affidavit, statement or additional evidence, documentary or otherwise, which the tax commission may require to assure proper administration of the tax imposed under subdivision (a) of section eleven hundred five."

Section 1139 - "(a) In the manner provided in this section the tax commission shall refund or credit any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application therefor shall be filed with the tax commission (i) in the case of tax paid by the applicant to a person required to collect tax, within three years after the date when the tax was payable by such person to the tax commission . . . "

Article 29

Section 1214 - "(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, (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, and such other proof as the tax commission may require to insure proper administration of the taxes imposed . . . "