

Bus Company Transactions

Transportation Service vs. Equipment Rental

This memorandum states the Tax Department's policy with respect to the application of sales and use tax to certain transactions by bus companies. The following guidelines have been established to use in determining whether or not sales tax is due:

1. Where a bus company conducts a tour for which it determines the time and destination and sells tickets at a predetermined price, the company is providing a transportation service which is exempt.
2. Where a bus company charters a bus to a group, and the bus company retains dominion and control\* over the bus, the bus company is engaged in providing a transportation service and, therefore, the charges are exempt from sales tax. A chartering party's rights are limited to boarding the bus and riding to the agreed destination.
3. Where bus company "A" provides a bus to bus company "B" and company "A" relinquishes dominion and control\* (that is, company "B" exercises complete control of the departure and return times, the route, all stops along the route, and the destination), company "A" has provided a rental, lease or license to use the vehicle. Charges for such transactions are subject to tax. This is true even where the bus is rented for use in tours or charter operations.

If company "A" provides a driver along with the vehicle, and the charge for the driver is separately stated and reasonable in view of prevailing wage rates for the service of a driver, such charge may be excluded from the charges subject to tax. In addition, where all registration fees and all insurance charges are paid by the lessor, the amount of tax to be collected on charges for the rental of the bus may be computed pursuant to section 530.4, subdivisions (b) and (c), of the Sales and Use Tax Regulations.

Reg. Sec. 530.4(b) - "State and local sales and use tax schedule covering certain rentals or leases of motor vehicles. Except as set forth in subdivision (c) of this section, provided all registration fees and all insurance charges are paid by the lessor, the amount of tax to be collected on charges for the rental or lease of motor vehicles may be computed under Article 28 or pursuant to Articles 28 and 29 of the Tax Law on 82 percent of the total rental or lease charge, and such method of computation shall be in lieu of separately stating a charge for these or other non-taxable items, such as vehicle parking (including any amounts separately stated on billings, other than charges for chauffeurs and helpers) .... "

\*See footnote on page 2

Reg. Sec. 530.4(c) - "State and local sales and use tax schedule covering certain rentals or leases of motor vehicles subject to tax rate effective in New York City. Provided all registration fees and all insurance charges are paid by the lessor, the amount of tax to be collected on charges for the rental or lease of motor vehicles subject to the . . . sales or use tax rate effective in New York City may be computed on 90 percent of the total rental or lease charge, and such method or computation shall be in lieu of separately stating a charge for these or other non-taxable items (including any amounts separately stated on billings, other than charges for chauffeurs and helpers) . . . . "

4. Where bus company "A" provides a bus to bus company "B" and company "A" retains complete dominion and control\* over the operation of the bus (actual and exclusive possession and control thereof), such transaction is considered to be a provision of transportation by company "A" and exempt from tax.

\*Dominion and control remains with the owner of a vehicle when pursuant to an agreement or contract:

1. there is no transfer of possession, control and/or use of the vehicle during the terms of the agreement or contract; and
2. the owner maintains the right to hire and fire the drivers; and
3. the owner uses his own discretion in performing the service (even though the customer may designate the area where passengers will be picked up and delivered) and generally selects his own routes; and
4. the owner retains the responsibility for the operation of the vehicle; and
5. the owner directs the operation, pays all operating expenses, including drivers' wages, insurance, tolls and fuels.