

**New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit**

TSB-A-12(21)S
Sales Tax
August 28, 2012

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S120125A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] 133-58 31st Drive, Flushing, New York 11354. The issues raised by Petitioner are:

1. Are Petitioner's charges to tow or transport a vehicle or construction equipment to a customer, or between a customer's job sites, subject to sales tax if such delivery is separately stated on its receipt when Petitioner rents the equipment to the customer or the equipment is customer-owned?

2. Does Petitioner collect any tax due at the full sales tax rate?

We conclude that Petitioner's charge to its customer to deliver equipment it rents to the customer is taxable whether or not the delivery charge is separately stated on the receipt. Petitioner's charge for transportation or towing of customer-owned equipment is not taxable unless done in conjunction with a taxable service. When tax is due, it is at the combined State and local tax rate in effect in the jurisdiction where the customer takes possession of the vehicle or equipment.

Facts

Petitioner rents construction equipment and vehicles to customers. While Petitioner does not list types of equipment in its petition, Petitioner's website shows that this includes various types of construction equipment, from tools to mini excavators to concrete mixers. It delivers that equipment to its customers by truck or by use of a flatbed tractor-trailer. It also transports equipment it rents to a customer and equipment owned by a customer from one job site to another. For purposes of this advisory opinion, we assume that Petitioner's customers are not exempt organizations.

Analysis

Rentals of construction equipment and vehicles are subject to sales tax. *See* Tax Law §§1105(a) and 1101(b)(5); 20 NYCRR §526.7(a)(2). A vendor's charge to its customer to deliver such equipment or vehicles is part of the receipt subject to sales tax, whether or not the delivery charge is separately stated on a bill or invoice to the customer. *See* Tax Law §1101(b)(3); 20 NYCRR §526.5(g)(1).

Transportation of tangible personal property, per se, is not, by itself, a taxable service. Thus, Petitioner's transportation of equipment owned by its customer is not taxable, if the transportation is not provided in conjunction with a taxable service. However, Petitioner's towing or transport of its customer's equipment in conjunction with Petitioner's or a third party's providing maintenance or repair services to that equipment would be subject to tax. *See* 20 NYCRR §526.5(g)(3); TSB-A-10(25)S.

The tax required to be collected is at the full State and local rate in effect in the jurisdiction where the customer takes possession of the vehicle or equipment. *See* Tax Law §§1105 (opening language), 1131(3), 1132(a)(1), 1137(a)(i), and 1210(a)(1); 20 NYCRR §526.13. We note that if Petitioner rents a passenger car to a customer, that rental would also be subject to the statewide special 6% tax imposed by section 1160 of the Tax Law. "Passenger car" means a motor vehicle of 9000 pounds or less, with a seating capacity of nine persons or less designed for passenger transportation including, for example, a pickup truck. If Petitioner makes such rentals, it would be required to collect and remit such tax with its sales tax return. *See* Tax Law §1165. In addition, the rental of such a passenger car rented or used within the Metropolitan Commuter Transportation District (MCTD) would be subject to a special supplemental tax of 5% in addition to the special 6% tax. The MCTD consists of New York City and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester.

DATED: August 28, 2012

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.