

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether its service of providing transportation to railroad employees is subject to sales tax.

We conclude that receipts from the sale of Petitioner’s transportation service are subject to sales tax if service begins and ends in New York State.

Facts

Petitioner contracts with railroad companies to provide transportation services to railroad employees. Petitioner transports their employees exclusively to a required work destination. Petitioner does not provide its services to the general public. Petitioner’s vehicles are designed to transport eight or fewer passengers.

Analysis

Tax Law § 1105(c)(10) imposes sales tax on transportation service provided in New York State, regardless of whether the charge is paid in New York or out of State. Tax Law § 1101(b)(34) defines “transportation service” as the service of transporting, carrying or conveying a person or persons by livery service; whether to a single destination or to multiple destinations; and whether the compensation paid by or on behalf of the passenger is based on mileage, trip, time consumed or any other basis. “Livery service” means service provided by limousine, black car or other motor vehicle, with a driver. “Limousine” is defined as “a vehicle with a seating capacity of up to fourteen persons, excluding the driver, and any vehicle with a seating capacity of between fifteen and twenty persons, excluding the driver, that has only two axles and four tires. A “black car” is a “for-hire vehicle that is dispatched from a central facility.”

Receipts from the sale of a transportation service are subject to sales tax only if the service begins and ends in New York. *See* TSB-M-09(7)S. Transportation service that begins and ends in New York is deemed intrastate even if it passes outside New York during a portion of the trip. *See* Tax Law § 1101(b)(34). A charge for transportation service made outside New York is taxable if the service begins and ends in New York. *See* TSB-M-09(7)S.

Petitioner’s service constitutes a transportation service for sales tax purposes. Petitioner is hired by railroad companies to transport their employees to their work destinations. The vehicles Petitioner uses to provide this service are “limousines,” because they come within the maximum seating capacity of up to fourteen persons, excluding the driver. The vehicles may also be within

the definition of a black car if they are dispatched from a central facility. Because the service is provided by limousine, it constitutes a “livery service.” Finally, because Petitioner transports its customer’s employees by livery service, Petitioner is providing a taxable transportation service if the trip begins and ends in New York State.

Petitioner contends it is exempt from New York sales tax because its services are “wholly in interstate commerce,” based on the decision in *Brown’s Crew Car of Wyoming, LLC v. Nevada Transportation Authority*, No. 2:08-CV000777, 2009 WL 1240458 (D. Nev. May 1, 2009). However, that case is not controlling. Even if it were, its holding is that the federal Motor Carrier Safety Administration has exclusive jurisdiction over the licensing of rail crew transportation services under the Motor Carrier Act (Pub. L. No. 96-296). It does not support a conclusion that such services provided within New York are exempt from State and local sales taxes.

DATED: July 30, 2024

/s/

MARY ELLEN LADOUCEUR
Principal Attorney

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.