

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

TSB-A-81(32)S
Sales Tax
October 9, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810526A

On May 26, 1981, a Petition for Advisory Opinion was received from Airway Services, P. O. Box 157, JFK International Airport, Jamaica, New York 11430.

The issue raised is whether a cancellation fee and transportation charges relating to the lease of tangible personal property are subject to tax.

Petitioner entered into an agreement with an airline company for the lease of a mobile passenger lounge to be delivered within New York City. The mobile passenger lounge is a non-highway vehicle powered by a V-8 engine, weighs 55,000 pounds and is 49 feet long by 16 feet wide. It is used to transport up to 90 passengers from an airline terminal to an aircraft.

The unit was located outside New York State and, while being transported to New York, it sustained damage which required that it be diverted enroute to another point outside New York for repair. The unit never entered New York State. The lessee-airline company advised Petitioner that it was terminating the lease. The lease agreement provided a cancellation fee and transportation charges upon termination.

The Sales and Use Tax Regulations state, in relevant part that: "The sales tax is a "destination tax," that is, the point of delivery or point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate." 20 NYCRR 525.2(a).

Since the mobile passenger lounge never entered New York State and was never transferred by Petitioner to the lessee-airline, no incident of tax arose. Accordingly, Petitioner is not required to collect sales tax from the lessee on billings for the cancellation fee and transportation charges prescribed in the lease agreement.

DATED: September 22, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services