

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

TSB-A-81(69)S  
Sales Tax  
April 6, 1982

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S811215A

On November 7, 1981, a Petition for Advisory Opinion was received from Metropolitan Transportation Authority, 347 Madison Avenue, New York, New York 10017.

The issue raised is whether sales, compensating use or excise tax is payable by the purchaser of any property which constitutes equipment, facilities, a transportation facility or a transit facility as such terms are defined in §§1200 and 1261 of the Public Authorities Law, if in connection with such purchase either from a manufacturer or as part of a sale-leaseback transaction, the purchaser leases the same to any municipality, public authority, or public benefit corporation for its use, and such lease contains an option to the lessee to purchase such property upon the scheduled expiration of such lease for a nominal consideration; and whether any such tax would be payable by such lessor upon the purchase of such property by such municipality, public authority or public benefit corporation pursuant to such option or agreement. The property referred to above consists of certain mass commuting vehicles.

Section 1105(a) of the Tax Law imposes the State sales tax on the receipts from retail sales of tangible personal property. The term "retail sales" is defined so as to exclude sales for resale as such. Tax Law, §1101(b)(4)(i). The term "sale" is defined so as to include a rental or lease. Tax Law, §1101(b)(5).

Section 1116(a)(1) of the Tax Law provides for an exemption from the sales tax with respect to purchases by the "State of New York or any of its agencies, instrumentalities, public corporations. . . or political subdivisions. . . ." The lessees involved herein are exempt entities by virtue of such provision. They are the Metropolitan Transportation Authority and the New York City Transit Authority and their subsidiaries.

Under the circumstances outlined above, a sale of a mass commuting vehicle to a person purchasing the same for the purpose of thereupon leasing the vehicle constitutes a purchase for resale as such, and not a retail sale. Such sale is accordingly not subject to sales tax. The leasing of the vehicles constitutes a retail sale, but no tax liability would arise herein because the lessee in each case would be an entity exempt from tax pursuant to section 1116(a)(1) of the Tax Law.

Similarly, there would be no tax due on the exercise by an exempt entity of an option to purchase, at the termination of the lease term. Finally, the foregoing is also applicable with respect to all State and locally imposed sales taxes, including the New York City sales tax.

DATED: December 15, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau