

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

TSB-A-87(33)S
Sales Tax
September 21, 1987

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S870612A

On June 12, 1987, a Petition for Advisory Opinion was received from Robert Cimillo, 19 Aqueduct Road, Peekskill, New York, 10566.

The issue raised is the correct rate of sales tax imposed upon a new boat purchased within the City of New Rochelle, N.Y.

Petitioner, a resident of Peekskill, New York, purchased a new boat in New Rochelle, New York. Petitioner paid the sales tax rate applicable to New Rochelle.

New York Tax Law section 1105(a) imposes a sales tax on the receipts from every retail sale of tangible personal property, except as otherwise provided. The rate of state sales tax within the Metropolitan Commuter Transportation District (MCTD) (which includes New Rochelle) is 4¼%. Article 29 of the Tax Law authorizes localities within the state to impose sales taxes which are in addition to the state sales tax imposed under section 1105(a) of the Tax Law. The combined rate of New York State tax plus local sales tax imposed within the City of Peekskill is 5 3/4% and within the City of New Rochelle is 7¼%.

Section 525.2(a)(4) of the sales and use tax regulations provides, in part, that "the tax is imposed on the retail sale of tangible personal property and is collected from the person who purchases at retail - the consumer."

Section 1101(b)(4) of the Tax Law defines "retail sale" as "[a] sale of tangible personal property to any person for any purpose other than for resale as such "

Section 525.2(a)(3) of the regulations provides, in part, that the sales tax is a destination tax in which the point of delivery or the point at which possession is transferred from the vendor to purchaser controls both the tax incident and the tax rate. Delivery to an agent, representative, employee, or other designee of the purchaser in New York State is a taxable transaction, as transfer of possession from the dealer to the purchaser is actually effected in New York State. (Technical Services Bureau Memorandum, Taxability of Vessels Sold By Boat Dealers, January 11, 1982, TSB-M-82(3)S).

Accordingly, a sale of tangible personal property, such as a boat, delivered or transferred within New York State is ordinarily subject to the sales tax at a rate equal to the State tax rate plus the local rate in effect for the particular locality where delivery or transfer is made. (Ibid.)

Accordingly, the appropriate rate of sales tax imposed upon a boat purchased and delivered within the City of New Rochelle is 7¼%.

Section 1214 of the Tax Law states:

(a) Where a sale of a motor vehicle, including an agreement therefor, is made in any city, county or school district to a nonresident thereof, such sale shall not be subject to tax by such city, county or school district, despite the fact that such motor vehicle is delivered to the purchaser within such jurisdiction provided the purchaser furnishes to the vendor, prior to taking delivery, proof satisfactory to the tax commission that the purchaser:

- (1) is a nonresident of the jurisdiction in which the sale is made,
- (2) has no permanent place of abode within such jurisdiction,
- (3) is not engaged in carrying on in such jurisdiction any employment, trade, business or profession in which the motor vehicle will be used in such jurisdiction However, if the purchaser resides in a city, county or school district imposing a tax on the use of such motor vehicle, the vendor shall be required to collect from the purchaser, as provided in section twelve hundred fifty-four, the aggregate compensating use taxes imposed by the city, if any, county and school district in which the purchaser resides

(b)

(c) For purposes of this section, the term "motor vehicle" shall include a motor vehicle as defined in section one hundred twenty-five of the vehicle and traffic law and a trailer as defined in section one hundred fifty-six of such law.

Accordingly, if Petitioner purchased a trailer (as defined in section 156 of the Vehicle and Traffic Law) to transport his boat and took delivery within the City of New Rochelle, the appropriate rate of sales tax, pursuant to the provisions of section 1214 of the Tax Law, is the Peekskill 5 3/4% rate.

For additional information regarding the taxability of vessels sold by boat dealers, see Technical Services Bureau Memoranda TSB-M-82(3)S and TSB-M-82(3.1)S.

DATED: September 21, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.