

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

TSB-A-89 (40)S
Sales Tax
November 6, 1989

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S890707A

On July 7, 1989 a Petition for Advisory Opinion was received from Key Bank, N.A., 60 State Street, Albany, New York 12201.

The issue raised is whether charges to Petitioner, Key Bank, N.A., by certain vendors for performing the services of recovering motor vehicles within and outside New York State, for the purpose of repossessing such vehicles on behalf of Petitioner, are subject to New York State and Local Sales Tax.

Petitioner has customers who have leased motor vehicles under leasing agreements entered into with Petitioner or who have purchased motor vehicles with loan proceeds obtained from Petitioner. When customers default on lease payments or loan payments, Petitioner contracts with vendors who provide motor vehicle recovery services.

While performing such repossession services, the vendors may incur expenses such as towing charges, mileage, charges for repairs or maintenance of the vehicle such as removal and replacement of the ignition or obtaining keys for the door and trunk, and storage charges for storing vehicle at a third party location. In some instances the recovery service may store the vehicle at the recovery service's own facilities.

Upon repossession, vehicles are generally delivered to the closest automobile auction site available for the purpose of being resold on behalf of Petitioner. Occasionally, Petitioner may resell a repossessed vehicle directly to a customer.

Section 1105(c) of the Tax Law imposes tax on the receipts from five enumerated categories of service. These include: the furnishing of information (with certain exceptions); producing, fabricating, processing, printing or imprinting tangible personal property; installing or maintaining, servicing or repairing tangible personal property; storing tangible personal property not held for sale in the regular course of business; and maintaining, servicing, or repairing real property. Inasmuch as the service in question does not come within the scope of any of the enumerated services in Section 1105(c) of the Tax Law, the charges to Petitioner for the repossession services are not subject to the tax imposed thereunder.

Section 526.5 of the Sales and Use Tax Regulations states, in relevant part:

Receipt [Tax Law, §1101(b)(3)] (a) Definition. The word receipt means the amount of the sale price of any property and the charge for any service taxable under articles 28 and 29 of the Tax Law, valued in money, whether received in money or otherwise...

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(e) Expenses. All expenses including telephone and telegraph and other service charges incurred by a vendor in making a sale, regardless of their taxable status and regardless of whether they are billed to a customer are not deductible from the receipts.

Example 1: A photographer contracts with a customer to furnish photographs at \$50 each in addition to expenses.

The customer is billed as follows:

Photographs (2)	\$100.00
Model fees	60.00
Meals	10.00
Travel	25.00
Props (flowers)	<u>5.00</u>
Total Due	\$200.00

Receipt subject to tax is \$200.00

In the instant case, the expenses (e.g. towing charges, mileage, charges for repairs or maintenance of the vehicles, third party storage charges, etc.) incurred by the recovery services in performing repossession services for Petitioner are considered to be part of the total receipts for such repossession services. Inasmuch as the repossession services are not within the scope of any of the enumerated services under Section 1105(c) of the Tax Law, the receipts from the charges to Petitioner are not subject to New York State or Local Sales Tax.

In those instances where the recovery services bill Petitioner for storing the vehicles at the recovery service's facilities, the receipts from such charges to Petitioner will be excluded from tax either as expenses included in non-taxable receipts or under the provisions of Section 1105(c) of the Tax Law as receipts from the storage of tangible personal property held for sale by Petitioner in the regular course of business.

It is noted that in those instances where a recovery service incurs expenses within New York State which are subject to state and local sales tax (e.g., purchases of towing services, repair and maintenance services, third party storage services), the recovery service will be liable for paying the sales tax due on the purchase of such services.

DATED: November 6, 1989

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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