

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

TSB-A-98(10)S  
Sales Tax

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S960826A

On August 26, 1996, the Department of Taxation and Finance received a Petition for Advisory Opinion from Package Auto School & Leasing Inc., 7 Odell Plaza, Yonkers, NY 10701. Petitioner, Package Auto School & Leasing Inc., provided additional information pertaining to the Petition on July 16, 1997.

The issues raised by Petitioner, Package Auto School & Leasing Inc, are:

1. Whether Petitioner's road test vehicle usage charges are subject to New York State and local sales and use tax.
2. Whether Petitioner's occasional sales of company vehicles to individuals are subject to New York State and local sales and use tax.

Petitioner presents the following facts.

Petitioner inquires whether its charges for supplying vehicles to driver education students for purposes of taking the drivers' licensing road test are subject to sales tax. In addition to use of the instructional vehicle for the road test, the road test vehicle usage charge includes the following services for a cost of \$40:

- a. Petitioner makes the road test appointment in person at the Department of Motor Vehicles on behalf of the student.
- b. Petitioner makes phone calls and sends letters informing students of time and date of the test.
- c. Petitioner arranges for transportation to and from the road test site usually in a vehicle other than the road test vehicle.
- d. Petitioner provides one-half hour of last minute instruction and tips by certified instructors immediately prior to the road test.

About 25% of the time, students will provide their own vehicle for use in taking the road test rather than the vehicle provided by Petitioner.

Occasionally, Petitioner will sell one of the autos used in the business. The sale price of the vehicle is usually only a few hundred dollars. Petitioner states that the Department of Motor Vehicles advised that the tax would be paid by the purchaser of the vehicle at the time of registration.

Applicable Law and Regulations

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

\* \* \*

(5) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume ... conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor.

Section 1105 of the Tax Law imposes sales tax on:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

Section 1132 of the Tax Law provides, in part:

(a) Every person required to collect the tax shall collect the tax from the customer when collecting the price ... to which it applies. If the customer is given any sales slip, invoice, receipt or other statement or memorandum of the price, ... the tax shall be stated, charged and shown separately .... The tax shall be paid to the person required to collect it as trustee for and on account of the state.

\* \* \*

(c)(1) For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all receipts for property or services of any type mentioned in subdivision (a) ... of section eleven hundred five, ...are subject to tax until the contrary is established and the burden of proving that any receipt, ... is not taxable hereunder shall be upon the person required to collect tax or the customer.

\* \* \*

(f) The commissioner of motor vehicles shall not issue a registration certificate for any motor vehicle, ... except upon proof, ... that any tax imposed by section eleven hundred five or eleven hundred ten of this article with respect to the sale of the motor vehicle ... has been paid, or that no such tax is due....

(g)(1) The clerk of each county when performing the function of registration of a motor vehicle, ... shall act as the agent of the state tax commission to collect any retail sales tax due under this article ...

Section 1133 of the Tax Law provides, in part:

Liability for the tax.--(a) ... every person required to collect any tax imposed by this article shall be personally liable for the tax imposed, collected or required to be collected under this article....

Section 1160 of the Tax Law provides in part:

Special tax on passenger car rentals. (a)(1) On and after June first, nineteen hundred ninety, in addition to any tax imposed under any other article of this chapter, there is hereby imposed and there shall be paid a tax of five percent upon the receipts from every rental of a passenger car which is a retail sale of such passenger car.

SALES TAX INFORMATION LETTER NO. 22, Q. 353, August 31, 1966 provides:

"The supplying of cars for road tests constitutes a license to use or a rental of such cars (Tax Law Section 1101(b)(5)). It is not merely incidental to any instruction the instructor provides immediately preceding the road test".

### Opinion

Petitioner's road test vehicle usage charge includes the services of making the road test appointment, notifying the student of the time and date of the appointment, transportation to and from the road test site in a vehicle other than the road test vehicle, and last minute instruction. These services are not included among the enumerated services subject to sales and use tax under Section 1105(c) of the Tax Law. Accordingly, if Petitioner reasonably and separately states the charges for these services and the charges are separately billed on an invoice or other document of sale given to the customer, the charges for these services will not be subject to sales and use tax. The charge for supplying the motor vehicle for the road test is subject to the tax imposed under Section 1105(a) of the Tax Law and the Special Tax on Passenger Car Rentals imposed under Section 1160 of Article 28-A of the Tax Law. If Petitioner bills a customer a lump sum for use of the vehicle and the nontaxable services, the entire charge is subject to tax. See Moore Business Forms, Inc., Adv Op Comm T&F, February 15, 1995, TSB-A-95(6).

Petitioner's sales of vehicles to individuals are subject to New York State and local sales taxes. Petitioner is a person required to collect the tax and was under a duty to collect the New York State and local sales tax on its sales of company vehicles to individuals. The fact that section 1132(f) of the Tax Law provides that a purchaser may not register a vehicle in New York until it is proven that the sales tax was paid, does not relieve Petitioner of its duty and responsibility to collect the tax from the purchaser. (Matter of Mendon Leasing

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Corp. v State Tax Comm., 135 AD2d 917; Matter of the Boat Place, Inc., State Tax Commission, November 20, 1981, TSB-H-82(2)S; Matter of Jaques and Joan Burger as Officers of Country-Wide Leasing Corporation, State Tax Commission, October 7, 1986, TSB-H-86(181)S.

DATED: February 27, 1998

/s/  
John W. Bartlett  
Deputy Director  
Technical Services Bureau

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