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

TSB-M-89 (16)C
Corporation Tax
November 2, 1989

Opinion of Counsel
Household Movers

August 8, 1989

We have reviewed the materials you forwarded to us on June 30, 1989, including the sample agent/van line agreements and the Motor Carrier Annual Report, and in light thereof have reexamined the position expressed in my July 7, 1988 letter--that an out-of-state agent operating in New York State under a van line's ICC operating authority was subject to tax. As a result of this review and reexamination, we have decided to retract that position.

We have now determined that an out-of-state agent of a national van line which operates in New York State solely under the van line's ICC operating authority is not doing business in New York State on its own behalf and therefore is not subject to tax in New York State under Article 9 of the Tax Law. This determination is premised on the special relationship between the van line and the agent. We now recognize that, because of the way the household goods moving industry is structured, a carrier acting as an agent of a van line is operating essentially ms the van line itself rather than an independent company doing business in New York on behalf of the van line. However, if the out-of-state agent operates in New York State under its own ICC operating authority as well as under the van line's operating authority, it is doing business on its own behalf here and will be subject to tax under Sections 18B and 184 of the Tax Law.

In light of the fact that certain revenues received by the out-of-state agent from the van line for its operations on behalf of the van line are included in the van line's computation of its gross receipts tax under section 184, the out-of-state agent should not include those revenues in the calculation of its section 184 tax. Further, in order to ensure that an agent located in New York State is taxed in the same manner as an out-of-state agent, we have concluded that the New York agent should not include in the computation of its gross receipts tax any revenues that were received from the van line and were included in the computation of the van 1ine's section 184 tax. However, if the van line has not paid tax on certain revenues, such as from accessorial services, the agent must include those revenues in its tax calculation.

This opinion should be applied retroactively to June, 1986 when the issue of whether out-of-state agents were subject to tax first arose.

s/William F. Collins
Deputy Commissioner and Counsel