

1981 Legislation - Chapters 103 and 1043
Exemption For Certain Rentals or Leases of Trucks,
Tractors or Tractor-Trailer Combinations

Subparagraph (i) of subdivision (b) of section 1101, article 28 of the Tax Law is amended to include in the definition of retail sale, the transaction of purchasing a truck, trailer or tractor-trailer combination for rental or lease to an authorized carrier*, if the rental or lease is exempt from sales and use tax pursuant to section 1115(a)(22) of the Tax Law.

Subdivision (a) of section 1115, article 28 of the Tax Law is amended by adding a new paragraph, number 22. This paragraph provides for an exemption from sales tax on the rental or lease of trucks, tractors or tractor-trailer combinations where:

1. the rental or lease is made to an authorized carrier,
2. the rental or lease is pursuant to a written contractual agreement,
3. the vehicle is used as augmenting equipment** in the transportation for hire of tangible personal property by an authorized carrier, and
4. the vehicle is driven by the owner of the vehicle or by an employee of the owner.

The law provides this exemption shall apply retroactively and be controlling in any action or proceeding to enforce, abate or recover a tax assessment, provided that refund may be claimed as prescribed in section 1139 of the Tax Law and provided further that liability for the tax had not been finally adjudicated prior to January 1, 1980.

The following are definitions from the Transportation Regulations pertaining to authorized carriers:

*Authorized carrier is any person or persons authorized to engage in the transportation of property as a common or contract carrier.

Common carrier of property by motor vehicle means a person or corporation undertaking, whether directly or by lease or any other arrangement, to transport property or any class thereof, for the general public by motor vehicles for compensation, whether over regular or irregular routes, or within a defined territory, including such motor vehicle operations of carriers by rail or water, and of express or forwarding companies to the extent they are not otherwise included within parts one and two of the interstate commerce act of the United States and the laws of this state.

Contract carrier of property by motor vehicle, as used in sections one hundred sixty through one hundred eighty-one of this chapter, means any person or corporation not a common carrier of property by motor vehicle . . . transporting property by motor vehicle for compensation under special and individual continuing contracts or agreements with one person or a limited number of persons for the furnishing of transportation services of a special and individual nature required by the customer, and whether directly or by lease or any other arrangement.

* *Augmenting equipment - for purposes of this amendment, the definition in Part 845.3 of Title 17 of the Transportation Regulations will apply.

The following examples illustrate taxable and nontaxable transactions:

- Example 1: An authorized carrier rents or leases a tractor-trailer combination from a truck rental company. The authorized carrier's employee operates the tractor-trailer combination to transport tangible personal property from one point to another. The rental or lease charges to the authorized carrier are taxable.
- Example 2: An authorized carrier rents or leases a tractor-trailer combination from an owner-operator. The owner or the owner's employee operates the tractor-trailer combination to transport tangible personal property from one point to another. The rental or lease charges to the authorized carrier are not taxable.
- Example 3: A transportation company which has certain regulated rights owns no equipment of its own, but conducts its business solely through the use of owner-operated rental equipment. This company is entitled to a sales tax exemption on the rental charges, pursuant to section 1115(a)(22) of the Tax Law.