

New York State Department of Taxation and Finance  
**Office of Tax Policy Analysis**  
**Technical Services Division**

TSB-A-05(27)S  
Sales Tax  
June 23, 2005

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S040810A

On August 10, 2004, the Department of Taxation and Finance received a Petition for Advisory Opinion from Transittowne Dodge Associates L.P., 7408 Transit Road, Williamsville, NY 14221.

The issue raised by Petitioner is whether Petitioner's vehicles provided to customers for no charge under the provisions of an extended warranty plan are purchased for resale and, as such, are exempt from sales and compensating use tax.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner operates a Dodge automobile dealership, selling and servicing new and used automobiles. In addition to the basic manufacturer's warranty, new and used car customers may purchase a DaimlerChrysler extended service contract for an additional charge plus the applicable State and local sales tax. The extended service contract contains a provision entitling the customer to a car rental allowance when the customer's vehicle requires overnight repairs. In fulfillment of the rental car requirement under the service contract, Petitioner provides the customers with a dealer-owned "rental" vehicle. Petitioner receives payment from DaimlerChrysler for the provision of the rental vehicle to the customer, pursuant to the terms of the extended service contract.

The extended service contracts typically provide coverage similar to the following provision:

**Car Rental Allowance (overnight repairs):** Coverage starts on the date you purchase the Plan and is not subject to a deductible. The Plan will pay up to \$30 per day (\$150 maximum) for a rental any time repairs take overnight, and a component covered by the Plan or the manufacturer's Basic Warranty fails.

Petitioner currently uses dealer-owned vehicles from its rental fleet to provide the service contract customers with the required car. Since Petitioner provides these cars to customers for no additional charge, Petitioner has not collected sales tax from the customers. Sales tax was previously paid by the customer on the extended service contract when it was purchased.

**Applicable law and regulations**

Section 1101(b)(4)(i) of the Tax Law defines the term retail sale, in part, as:

A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3), (5), (7) and (8) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax. . . .

Section 1105 of the Tax Law provides, in part:

**Imposition of sales tax** On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax . . . upon:

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

\* \* \*

(c) The receipts from every sale, except for resale, of the following services:

\* \* \*

(3) Installing tangible personal property, excluding a mobile home, or maintaining, servicing or repairing tangible personal property, including a mobile home, not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith. . . .

Section 526.6(c) of the Sales and Use Tax Regulations provides, in part:

*Resale exclusion.* (1) Where a person, in the course of his business operations, purchases tangible personal property or services which he intends to sell, either in the form in which purchased, or as a component part of other property or services, the property or services which he has purchased will be considered as purchased for resale, and therefore not subject to tax until has transferred the property to his customer.

\* \* \*

(2) A sale for resale will be recognized only if the vendor receives a properly completed resale certificate. . . .

Section 527.5 of the Sales and Use Tax Regulations provides, in part:

(c) Maintenance and service contracts. (1) The purchase of a maintenance or service contract is a taxable transaction.

(2) The vendor making sales of such contracts may purchase for resale any tangible personal property which is transferred to his customer in connection with the services rendered.

(3) Any charge made for services rendered in addition to the purchase price of the maintenance or service contract is taxable.

\* \* \*

(d) Warranty work. (1) Repair or maintenance services rendered, without charge to a customer under a warranty agreement are not taxable.

(2) The vendor performing the warranty services may purchase for resale any tangible personal property which is transferred to his customer in connection with the services rendered.

(3) Charges for services rendered which are not covered by the warranty are taxable.

(4) Where a manufacturer reimburses a vendor or repairman performing warranty work, the reimbursement is not taxable, as it was for resale.

Section 541.1(g) of the Sales and Use Tax Regulations provides, in part:

Guarantee and warranty work. (1) Payments by a contractor to another contractor to perform maintenance, service and repair of real and tangible personal property when purchased to fulfill a guarantee or warranty are not subject to tax.

## **Opinion**

The terms of the extended service contracts purchased by Petitioner's customers provide that the customers are entitled to a rental vehicle, without charge, while the customer's vehicle is being held for repair overnight. In fulfillment of the rental car requirement under the service contract, Petitioner provides the customers with a dealer-owned rental vehicle. Petitioner receives payment from DaimlerChrysler for the provision of the rental vehicle to the customer, pursuant to the terms of the extended service contract.

Petitioner has a fleet of rental vehicles. To the extent that the vehicles in such fleet are used exclusively for rental purposes by Petitioner, such vehicles may be purchased by Petitioner for resale without payment of sales tax. See *John B. Pike and Son, Inc.*, Adv Op St Tx Comm,

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July 26, 1985, TSB-A-85(29)S; *P-H Fine Arts, Limited et al*, Dec Tax App Trib, October 13, 1994, DTA Nos. 807860-807867. DaimlerChrysler has agreed to pay the cost of the rental vehicles provided to Petitioner's customers whose vehicles require overnight repairs pursuant to the extended service contract. Such vehicles are used exclusively as rental vehicles by Petitioner, whether the rentals are paid for by (a) DaimlerChrysler or (b) DaimlerChrysler, other warranty and service contract companies, and customers, so long as such vehicles are not used by Petitioner for any other purpose. Accordingly, Petitioner may purchase vehicles which are provided to customers as rental vehicles pursuant to extended service contracts for resale without payment of sales tax. Vehicles used exclusively for rental purposes by Petitioner as described in this Opinion are not mixed use vehicles and are not subject to use tax. See Technical Services Bureau Memorandum entitled *Sales and Use Tax Treatment of Motor Vehicles Used by Dealers*, June 7, 2002, TSB-M-02(3)S, with respect to mixed use vehicles.

The purchase of property for use in fulfillment of a warranty or repair contract is a purchase for resale which is not subject to tax. In the present case, customers are entitled to a rental vehicle pursuant to their extended service contract with Daimler Chrysler. Thus, the rental of the vehicle from Petitioner by DaimlerChrysler for use in fulfilling its extended service contract with the customer is a purchase for resale by DaimlerChrysler and is not subject to sales tax. See section 527.5(c) of the Sales and Use Tax Regulations and *West-Herr Ford, Inc. v Tax Appeals Trib. of State of N.Y.*, 16 AD3d 727 (3<sup>rd</sup> Dept 2005). Petitioner should receive a resale certificate from DaimlerChrysler to substantiate the nontaxable status of this transaction. See section 1132(c) of the Tax Law and section 532.4 of the Sales and Use Tax Regulations.

No tax is due from the customer on the rental vehicle if there are no charges to the customer for the use of the vehicle. The use of such vehicle was previously purchased by the customer as part of the purchase of the extended service contract, and such contract has already been taxed. However, any additional charges to the customer not covered in the service contract are subject to sales tax at the applicable rate.

DATED: June 23, 2005

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