

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

TSB-A-91 (20)S
Sales Tax
February 13, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910117B

On January 17, 1991 a Petition for Advisory Opinion was received from BEJ Taxi Corp., 137 Lark Street, Albany, New York 12210.

The issue raised by Petitioner, BEJ Taxi Corp., is whether the 5% special tax on passenger car rentals imposed by Section 1160 of the Tax Law applies to the lease of cars by Petitioner to taxi drivers on a shift by shift basis.

Petitioner is a taxi company. It leases cars to taxi drivers in Albany County on a shift basis, the shifts ranging in time from 6 to 12 hours. Petitioner pays the registration fees, insurance fees and other nontaxable charges. Historically, Petitioner has charged and collected sales tax due on such leases pursuant to Section 1105 of the Tax Law at 82% of the total lease charge pursuant to Section 541.9(c)(2)(iii) of the Sales and Use Tax Regulations.

Section 1160 of the Tax Law provides in part that:

(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.

* * *

(b) For purposes of this section, the following definitions shall apply:

- (1) Motor vehicle. A motor vehicle as defined in section one hundred twenty-five of the vehicle and traffic law, but not including a motorcycle.
- (2) Passenger car. A motor vehicle having a gross vehicle weight of nine thousand pounds or less with a seating capacity of nine persons or less designed for passenger transportation.
- (3) Rental. The transfer of possession of a motor vehicle, whether or not the motor vehicle is required to be or is registered by this state, for a consideration, without the transfer of the ownership of such motor vehicle, but not including a lease described in subdivision (i) of section eleven hundred eleven of this chapter.

Section 1165 of the Tax Law provides in part that:

The tax imposed by section eleven hundred sixty of this article shall be administered and collected in a like manner as and jointly with the taxes imposed by sections eleven hundred five and eleven hundred ten of article twenty-eight of this chapter. All of the provisions of such article twenty-eight (except sections eleven hundred seven, eleven hundred eight and eleven hundred nine) relating to or applicable to the administration, collection, review and disposition of the taxes imposed by such sections eleven hundred five and eleven hundred ten, including, but not limited to, the provisions relating to definitions, exemptions, returns, personal liability for the tax, collection of tax from the customer, collection of tax at the time of registration of a motor vehicle and payment of tax by a person required to file a return, shall apply to the tax imposed by this article so far as such provisions can be made applicable to the tax imposed by this article with such limitations as set forth in this article and such modifications as may be necessary in order to adapt such language to the tax so imposed. Such provisions shall apply with the same force and effect as if the language of those provisions had been set forth in full in this article except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to the tax imposed by this article. For purposes of this article, any reference in article twenty-eight to the tax or taxes imposed by such article shall be deemed to refer to the tax imposed by this article also unless a different meaning is clearly required . . .

Section 541.9(c)(2)(iii) of the Sales and Use Tax Regulations provides that:

Where the lessor pays all registration fees, insurance charges, and other nontaxable items, the tax to be collected from the contractor on the charges for the rental or lease of a motor vehicle may be computed on 82% of the total rental or lease charge, unless a charge is subject to the sales tax in New York City in which case the tax on each such charge may be computed on 90% of the total charge. When the exclusion is claimed, the registration fees, insurance charges and other nontaxable items charged the contractor (other than the driver's and helper's wages if separately stated) must be included in the total rental or lease charges. If the lessee has an option to pay for additional insurance coverage, such charge, if separately stated is exempt from the tax.

The taxicabs leased by Petitioner to drivers are motor vehicles as defined in Section 1160(b)(1) of the Tax Law. They are also passenger cars as defined in Section 1160(b)(2) of the Tax Law. The transfer of the taxicabs to drivers for shifts ranging in time from 6 to 12 hours for a consideration constitutes a rental as defined in Section 1160(b)(3) of the Tax Law. Therefore the 5% special tax on passenger car rentals imposed by Section 1160(a)(1) of the Tax Law is

applicable to receipts received by Petitioner from the rental of taxicabs on a shift basis to drivers.

Furthermore the provisions of Section 541.9(c)(2)(iii) of the Sales and Use Tax Regulations providing for the computation of tax at an 82% rate where the lessor of a motor vehicle pays all registration fees, insurance charges and other nontaxable items are applicable to the 5% special tax on passenger car rentals imposed by Section 1160(a)(1) of the Tax Law. This is true because Section 1165 of the Tax Law provides that all of the provisions relating to definitions and exemptions concerning taxes imposed by Section 1105 of the Tax Law will apply to the tax imposed by Section 1160(a)(1) of the Tax Law.

Therefore Petitioner in computing the tax due on its rental of taxicabs to drivers should collect sales tax in Albany County at the rate of 7% plus 5% times 82% of the rental charge.

It should be noted that Section 541.9(c)(2)(iii) of the Regulations is not provided for by statute and therefore if this section of the Regulations was to be repealed, the Petitioner would not be entitled to the exclusion provided by said Section.

DATED: February 13, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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