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New York Advisory Opinion No. TSB-A-99(22)S

Date Issued: 04/08/1999

Tax Type(s): Sales and Use Tax

ADVISORY OPINION PETITION NO. S990210A

On February 10, 1999, the Department of Taxation and Finance received a Petition for Advisory Opinion from Stephen R. Brady, 224 Monroe Drive, Williamsville, New York 14221.

The issue raised by Petitioner, Stephen R. Brady, is whether sales tax applies when the owner of a vehicle re-registers the vehicle in the name of his revocable living trust.

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

Petitioner formed a revocable living trust (the "trust") for probate planning purposes, and sought to transfer title and registration for a motor vehicle to the trust. In the process of registering the vehicle in the name of the trust, New York State Department of Motor Vehicle (DMV) personnel attempted to collect sales tax when Petitioner presented Form DTF-803, Claim for Sales Tax Exemption-Title/Registration. When Form DTF-803 was presented, box 14 was checked (indicating an exemption was claimed other than those enumerated in the form) and the transaction was described as a "transfer to current registrant's revocable living trust". Petitioner

also submitted documentation to DMV that identified the trust, the trustee, the settlor, and the IRS issued employer identification number document.

Applicable Law and Regulations

Section 1101 of the Tax Law provides, in part:

Definitions (a) When used in this article the term "person" includes an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of the foregoing.

(b) 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:

(4) Retail sale. (i) 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...

(5) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume (including, with respect to computer software, merely the right to reproduce), 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(a) of the Tax Law provides for the imposition of sales tax on the receipts from every retail sale of tangible personal property, except as otherwise provided.

Section 526.7 of the Sales and Use Tax Regulations provides, in part:

(a) Definition. (1) The words sale, selling or purchase mean any transaction in which there is a transfer of title or possession, or both, of tangible personal property for a consideration.

(b) Consideration. The term consideration includes monetary consideration, exchange, barter, the rendering of any service, or any agreement therefor. Monetary consideration includes assumption of liabilities, fees, rentals, royalties or any other charge that a purchaser, lessee or licensee is required to pay.

(e) Transfer of possession. (1) Except as otherwise provided in paragraph (3) of this subdivision, a sale is taxable at the place where the tangible personal property or service is delivered, or the point at which possession is transferred by the vendor to the purchaser or his designee.

(4) Transfer of possession with respect to a rental, lease or license to use, means that one of the following attributes of property ownership has been transferred:

- (i) custody or possession of the tangible personal property, actual or constructive;
- (ii) the right to custody or possession of the tangible personal property;
- (iii) the right to use, or control or direct the use of, tangible personal property.

Opinion

By registering the motor vehicle in the name of the revocable living trust and transferring title to the trust, Petitioner is transferring tangible personal property to a separate entity. Therefore, if there is consideration of any form in connection with the transfer, a retail sale of tangible personal property occurs in accordance with Sections 1101(b)(4) and 1101(b)(5) of the Tax Law and sales tax is imposed under Section 1105(a) of the Tax Law. (See *Randy T. Rodecker, Inc., Adv. Op Comm. T&F., August 6, 1998, TSB-A-98(54)S.*) If there is no consideration for the transfer, no tax is due on this transaction.

A common situation that might cause the sales tax to be imposed on the type of transfer described by Petitioner occurs where the motor vehicle is transferred to the revocable trust subject to an existing debt. In such a case, the assumption of the debt by the trust would constitute consideration, in the amount of the assumed liability, under Section 526.7(b) of the Sales and Use Tax Regulations, and a retail sale subject to sales tax would result.

DATE: April 8, 1999

/s/

John W. Bartlett

Deputy Director

Technical Services Bureau

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

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