

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

TSB-A-92(1)M
Highway Use Tax
June 11, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M920422A

On April 22, 1992, a Petition for Advisory Opinion was received from The Movers, Inc., PO Box 244, Northeast Industrial Park, Building 1, Route 146, Guilderland Center, New York 12085.

The issue raised by Petitioner, The Movers, Inc., is whether the hauling and transportation of trash generated as a result and continuation of the exclusive household goods moving operation by Petitioner is exempt from truck mileage and fuel use taxes imposed under Article 21 of the Tax Law.

Petitioner, as a New York State Department of Transportation Certificated Household Goods Carrier, often generates trash requiring disposal from its household goods operation. Currently, this trash is disposed of at the Albany A.N.S.W.E.R.S. Program. Recently, Petitioner was cited by the Town of Guilderland for hauling trash out of class, with no Truck Mileage Tax Permit.

Petitioner does not engage in any business other than the exclusive transportation of household goods. The hauling of the trash is a continuation of the service of transporting household goods.

New York State Movers Rules and Regulations Tariff No. 24 provides that unpacking rates include that service of unpacking containers furnished and packed by mover and disposal of such containers and materials if requested by consignee. Unpacking service, if ordered, must be performed at time of delivery unless consignee requests otherwise. (emphasis added)

Petitioner received a letter dated May 12, 1992, from Gary E. Collins, Chief Transportation Rates Examiner, Carrier Certification and Compliance Bureau of the New York State Department of Transportation. The text of the letter states as follows:

Your May 1, 1992 *letter requested an advisory opinion regarding* whether or not packing materials, cardboard boxes and similar items are considered household goods.

Normally these items are not considered household goods. However, as you describe the situation these packing materials and cardboard boxes are used in the transportation of household goods. You hold authority from this Department as a household goods carrier. These items would be considered as part of a household goods shipment when they were transported with other household goods. Your tariff provides for the unpacking of these items and their disposal. Thus if you have used these items in a household goods move, and performed unpacking services and you are requested to dispose of them by the shipper then I would consider them to be a "by product" of the move.

The transportation of these commodities to the nearest land fill does not appear to be an unreasonable extension of your household goods authority.

Section 504 of the Tax Law provides exemption from highway use taxes, permit requirements and fees imposed by Article 21 of the Tax Law and the tax relating to carriers imposed by Article 13-A, Section 301-h of the Tax Law as follows:

Sec. 504. Exemptions.- - The provisions of this article shall not apply to any vehicular unit:

* * *

5. Used exclusively in the transportation of household goods (as defined by the commissioner of transportation of this state or the interstate commerce commission) by a carrier under authority of the commissioner of transportation of this state or of the interstate commerce commission.

Since the transportation of containers and packaging material generated as a result of the transportation of household goods at the request of the consignees directly to waste facilities following the transport of household goods constitutes the continuation of the transportation of the household goods pursuant to the letter of May 12, 1992, from the Department of Transportation, supra, and New York State Movers Rules and Regulations Tariff No. 24, supra, such transportation activity is exempt from the truck mileage and fuel use taxes pursuant to Section 504.5 of the Tax Law. The transportation to a waste facility of anything other than containers and packaging material generated as a result of the transportation of household goods or at any time other than directly following the transportation of household goods will contaminate the motor vehicle's exemption afforded by Section 504.5 of the Tax Law since the vehicle will not have been used exclusively in the transportation of household goods.

It is noted that the burden of proof is solely upon the Petitioner to show that the transportation of containers and packaging material to the waste facility is the result of a single transportation of household goods which directly follows such transportation of said goods.

DATED: June 11, 1992

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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