

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

TSB-A-06(5)M
Miscellaneous Tax
TSB-A-06(27)S
Sales Tax
October 19, 2006

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. Z050505A

On May 5, 2005, the Department of Taxation and Finance received a Petition for Advisory Opinion from Greene County Emergency Medical Services, Inc., PO Box 655, Cairo, New York 12413.

The issue raised by Petitioner, Greene County Emergency Medical Services, Inc., is whether it qualifies for a refund of taxes imposed by Articles 12-A (Tax on Gasoline and Similar Motor Fuels), 13-A (Tax on Petroleum Businesses) and 28 (Sales and Compensating Use Taxes) of the Tax Law upon its purchases and use of motor fuel.

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

Petitioner is a not-for-profit corporation established under the laws of New York State. Petitioner provides paramedic-level services to people who suffer serious medical emergencies, such as heart attacks and vehicular accidents. Petitioner has established exempt status under section 501(c)(3) of the Internal Revenue Code and section 1116(a)(4) of the Tax Law.

The local town boards of Greene County created Petitioner to address a critical gap in paramedic services in the county. The majority of Petitioner's board of directors is comprised of representatives from each town.

Petitioner purchases motor fuel (gasoline) that is consumed in the operation of its vehicles on the roads and highways of New York.

Petitioner has contracts with each of the towns in the county. Under these contracts, each town pays a percentage of the overall corporate budget. The percentage is determined by the number of the town's paramedic calls to which Petitioner responds as it relates to the total number of calls to which Petitioner responds throughout the county. Petitioner receives about 91% of its funding from local towns. The remaining 9% of its funding is obtained from the Greene County Rural Health Network, another local not-for-profit corporation that receives funding from the New York State Department of Health.

Petitioner's paid staff of paramedics travel to an emergency site in an SUV and work closely with the local voluntary ambulance squad that also arrives at the emergency site. After stabilizing the patient, one of Petitioner's paramedics boards the ambulance and travels with the patient to the hospital.

Applicable law and regulations

Section 284 of Article 12-A of the Tax Law provides, in part:

1. There is hereby levied and imposed an excise tax . . . upon motor fuel (a) imported into or caused to be imported into the state by a distributor for use, distribution, storage or sale in the state or upon motor fuel which is produced, refined, manufactured or compounded by a distributor in the state (which acts shall hereinafter in this subdivision be encompassed by the phrase “imported or manufactured”) or (b) if the tax has not been imposed prior to its sale in this state, which is sold by a distributor (which act, in conjunction with the acts described in paragraph (a) of this subdivision, shall hereinafter in this article be encompassed by the phrase “imported, manufactured or sold”), except . . . when imported or manufactured by an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter or a hospital included in the organizations described in paragraph four of such subdivision for its own use.

Section 284-a of Article 12-A of the Tax Law provides, in part:

In addition to the tax imposed by section two hundred eighty-four of this chapter, a like tax shall be imposed at the rate of three cents per gallon upon motor fuel imported, manufactured or sold within this state by a distributor. Except as otherwise provided in this section, all the provisions of this article except subdivision two of section two hundred eighty-nine-e of this article shall apply with respect to the additional tax imposed by this section to the same extent as if it were imposed by said section two hundred eighty-four. . . .

Section 284-c of Article 12-A of the Tax Law provides, in part:

In addition to the taxes imposed by sections two hundred eighty-four and two hundred eighty-four-a of this chapter, a like tax shall be imposed at the rate of one cent per gallon upon motor fuel imported, manufactured or sold within this state by a distributor. Except for paragraph (b) of subdivision three of section two hundred eighty-nine-c, all the provisions of this article shall apply with respect to the supplemental tax imposed by this section to the same extent as if it were imposed by said section two hundred eighty-four. . . .

Section 289-c of Article 12-A of the Tax Law provides, in part:

* * *

1-a (a) Any person selling motor fuel to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter or a hospital included in the organizations described in paragraph four of such subdivision for its own use or consumption . . . may exclude the amount of the tax or taxes imposed by this article from the selling price thereof.

* * *

3(a) Except as otherwise provided in paragraph (b) of this section, any person who shall buy any motor fuel or diesel motor fuel, on which the tax imposed by this article shall have been paid, and shall consume the same in any manner except in the operation of a motor vehicle upon or over the highways of this state, . . . shall be reimbursed the amount of such tax in the manner and subject to the conditions herein . . .

* * *

(f) Any voluntary ambulance service, as defined in section thirty hundred one of the public health law, which shall buy motor fuel on which the tax or taxes imposed by this article shall have been paid shall be reimbursed the amount of such tax in the manner and subject to the conditions herein set forth, provided such motor fuel has been consumed by such volunteer ambulance service vehicle in the course of operating within the state.

(g) An organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter or a hospital included in the organizations described in paragraph four of such subdivision, or a fire company or fire department, as defined in section three of the volunteer firefighters' benefit law, or a volunteer rescue squad supported in whole or in part by tax money where any such entity is the purchaser, user or consumer of motor fuel or diesel motor fuel in a vehicle owned and operated by it and used exclusively for its purposes . . . shall be reimbursed the amount of the taxes on motor fuel and diesel motor fuel imposed by or pursuant to the authority of this article included in the price paid for such motor fuel or diesel motor fuel.

Section 301-a(a) of Article 13-A of the Tax Law provides, in part:

General. Notwithstanding any other provision of this chapter, or of any other law, . . .there is hereby imposed upon every petroleum business for the privilege of engaging in business, doing business, employing capital, owning or leasing property, or maintaining an office in this state, a monthly tax for each or any part of a taxable month equal to the sum of the motor fuel component determined pursuant to subdivision (b) of this section, the automotive-type diesel motor fuel component determined pursuant to paragraph one of subdivision (c) of this section, the nonautomotive-type diesel motor fuel component determined pursuant to paragraph two of subdivision (c) of this section and the residual petroleum product component determined pursuant to subdivision (d) of this section.

Section 301-b of Article 13-A of the Tax Law provides, in part:

Exemptions. The following gallonage otherwise includable in the measure of the tax imposed by section three hundred one-a of this article on a petroleum business shall be exempt from the measure of tax on such petroleum business:

* * *

(c) Sales to New York State and the federal government. (1) Motor fuel imported or caused to be imported into this state or produced, refined, manufactured or compounded in this state by a petroleum business registered under article twelve-A of this chapter, as a distributor of motor fuel, and then sold by such petroleum business to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where such motor fuel is used by such organization for its own use or consumption.

(2) Enhanced diesel motor fuel imported or caused to be imported into this state or produced, refined, manufactured or compounded by a petroleum business registered under article twelve-A of this chapter, as a distributor of diesel motor fuel, and then sold by such petroleum business to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where such motor fuel is used by such organization for its own use or consumption.

Section 301-c of Article 13-A of the Tax Law provides, in part:

Reimbursement. A subsequent purchaser shall be eligible for reimbursement of tax with respect to the following gallonage, subsequently sold by such purchaser in accordance with subdivision (a), (b), (e), (h), (j) or (k) of this section or used by such purchaser in accordance with subdivision (c), (d), (f), (g), (i), (l) or (m) of this section, which gallonage has been included in the measure of the tax imposed by this article on a petroleum business:

* * *

(b) Sales to New York State and the federal government. Motor fuel and diesel motor fuel purchased in this state and sold by such purchaser in this state to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where (i) such motor fuel or diesel motor fuel is for such organization's own use or consumption, (ii) the tax imposed pursuant to this article has been paid with respect to such motor fuel or diesel motor fuel and the entire amount of such tax has been absorbed by such purchaser and, (iii) such purchaser possesses documentary proof satisfactory to the commissioner of taxation and finance evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article.

Provided, however, that the commissioner of taxation and finance shall require such documentary proof to qualify for any reimbursement of tax provided by this section as the commissioner deems appropriate, including the expansion of any certification required pursuant to section two hundred eighty-five-a or two hundred eighty-five-b of this chapter to cover the taxes imposed pursuant to this article.

Section 1116 of Article 28 of the Tax Law provides, in part:

(a) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

(1) The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services or property of a kind not ordinarily sold by private persons;

(2) The United States of America, and any of its agencies and instrumentalities, insofar as it is immune from taxation where it is the purchaser, user or consumer, or where it sells services or property of a kind not ordinarily sold by private persons;

* * *

(4) Any corporation, association, trust, or community chest, fund, foundation, or limited liability company, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual, . . .

(b) Nothing in this section shall exempt:

* * *

(5) purchases of motor fuel or diesel motor fuel from the tax required to be prepaid pursuant to section eleven hundred two of this article and retail sales of motor fuel or diesel motor fuel subject to the tax imposed by sections eleven hundred five and eleven hundred ten of this article, except that purchases of such fuel by an organization described in paragraph one or two of subdivision (a) of this section for its own use or consumption, purchases of motor fuel by a hospital included in the organizations described in paragraph four of such subdivision for its own use and consumption, purchases of motor fuel and diesel motor fuel by a fire company or fire department, as defined in section three of the volunteer firefighters' benefit law or a voluntary

ambulance service, as defined in section three thousand one of the public health law, for such department, company or service's own use and consumption for use in firefighting vehicles, apparatus or equipment, or emergency rescue or first aid response vehicles, apparatus or equipment, owned and operated by such department, company or service if such company, department or service qualifies as an exempt organization pursuant to the provisions of paragraph four of subdivision (a) of this section . . .

Section 1120 of Article 28 of the Tax Law provides, in part:

(d) Purchase of motor fuel or diesel motor fuel at retail by an exempt organization. A refund or credit equal to the amount of tax imposed pursuant to section eleven hundred five of this article and any like tax imposed pursuant to the authority of article twenty-nine of this chapter upon the sale of motor fuel or diesel motor fuel and paid by a purchaser shall be allowed such purchaser if the purchase, use or consumption of such fuel would have otherwise been exempt pursuant to section eleven hundred fifteen or eleven hundred sixteen of this article but for the provisions of subdivision (j) of section eleven hundred fifteen or paragraph five of subdivision (b) of section eleven hundred sixteen of this article. . . .

* * *

(h) Such refunds and credits shall be subject to the provisions of sections eleven hundred nineteen and eleven hundred thirty-nine of this article as if such sections were incorporated in full into this section and had expressly referred to the refunds and credits authorized by this section including the periods of limitations on payments and applications to the commissioner . . .

Section 529.2(a) of the Sales and Use Tax Regulations provides, in part:

Governmental entities. (1) *Agencies and instrumentalities of the State* as used in this section means any authority, commission or independent board created by an act of the Legislature for a public purpose.

(2) A *public corporation* as used in this section means any corporation created by an act of the Legislature for a public purpose or pursuant to an agreement or compact with another state or Canada.

Example: Urban Development Corporations and Industrial Development Agencies are public corporations and may purchase tangible personal property exempt from the sales and use taxes.

(3) A *political subdivision* as used in this section means a county, town, city, village, school district, fire district, special district corporation and board of cooperative educational services of this State.

Section 3001 of the Public Health Law provides, in part:

Definitions. As used in this article, unless the context otherwise requires:

1. "Emergency medical service" means initial emergency medical assistance including, but not limited to, the treatment of trauma, burns, respiratory, circulatory and obstetrical emergencies.

2. "Ambulance service" means an individual, partnership, association, corporation, municipality or any legal or public entity or subdivision thereof engaged in providing emergency medical care and the transportation of sick or injured persons by motor vehicle, aircraft or other forms of transportation to, from, or between general hospitals or other health care facilities.

3. "Voluntary ambulance service" means an ambulance service (i) operating not for pecuniary profit or financial gain, and (ii) no part of the assets or income of which is distributable to, or enures to the benefit of, its members, directors or officers except to the extent permitted under this article.

Opinion

Petitioner is a not-for-profit corporation created by Greene County's local town boards to address a critical gap in medical services in Greene County by providing paramedic-level services to people who suffer serious medical emergencies, such as heart attacks and vehicular accidents.

Petitioner's paid staff travels to an emergency site in an SUV and works closely with the local voluntary ambulance squad that also arrives at the emergency site. After stabilizing the patient, one of Petitioner's paramedics boards the ambulance and travels with the patient to the hospital.

Pursuant to section 284 of Article 12-A of the Tax Law, New York State excise tax is imposed on every gallon of motor fuel imported into the State by a distributor for use, distribution, storage, or sale, or sold by a distributor in the State if the tax has not been imposed prior to its sale in this State. Additional excise taxes are imposed under sections 284-a and 284-c of the Tax Law that conform to the tax imposed under section 284. The taxes may be excluded from the selling price in the case of sales of fuel to the state of New York, or any of its agencies, instrumentalities, public corporations, or political subdivisions described in section 1116(a)(1) of

Article 28 of the Tax Law; the United States of America, or any of its agencies or instrumentalities described in section 1116(a)(2); or a hospital which has exempt status pursuant to section 1116(a)(4). See section 289-c(1-a)(a) of the Tax Law.

Generally, for purposes of section 1116(a)(1) of the Tax Law, the terms *agencies*, *instrumentalities*, and *public corporations* mean entities created by acts of the Legislature for public purposes. A *political subdivision* means a county, town, city, village, school district, fire district, special district corporation, or board of cooperative educational services of New York State. See sections 529.2(a)(1), (2), and (3) of the Sales and Use Tax Regulations. Petitioner does not appear to come within the meaning of these terms.

Since Petitioner is not a governmental entity, agency, instrumentality, political subdivision, public corporation, or hospital, the motor fuel purchased by Petitioner is not eligible for exemption from the Article 12-A motor fuel taxes at the time of purchase. It should be noted that Petitioner's purchases of fuel for its own use or consumption, even if used to perform a service under a contract with a governmental entity, are not exempt from the motor fuel taxes as purchases by the governmental entity. See Publication 765, *Sales and Fuel Excise Tax Information for Properly Appointed Agents of New York Governmental Entities (5/05)*.

Reimbursement of the Article 12-A motor fuel tax imposed and paid on motor fuel is allowed for hospitals exempt under section 1116(a)(4) of the Tax Law; voluntary ambulance services as defined in the Public Health Law; volunteer fire companies or departments as defined in the Volunteer Firefighters' Benefit Law; volunteer rescue squads supported in whole or in part by tax money; and governmental entities described in sections 1116(a)(1) and (2) of the Tax Law, where such entities are the purchasers and such fuel is used exclusively by the entities for their purposes and consumed by the exempt entities' vehicles in the course of operating within New York State. See sections 289-c(3)(f) and (g) of the Tax Law.

Petitioner does not transport patients to or from hospitals or other health care facilities and is not a voluntary ambulance service as defined in section 3001 of the Public Health Law. See section 3001(2) of the Public Health Law. As discussed above, Petitioner is not a hospital exempt under section 1116(a)(4) of the Tax Law or a governmental entity described in section 1116(a)(1) or (2) of the Tax Law. Further, Petitioner is not a volunteer fire company or department or a volunteer rescue squad. Therefore, Petitioner does not qualify for reimbursement of the motor fuel tax under section 289-c(3) of the Tax Law.

Article 13-A of the Tax Law provides for exemption from, or reimbursement of, the petroleum business tax imposed by Article 13-A for sales of motor fuel to governmental entities described in section 1116(a)(1) or (2) of the Tax Law. See sections 301-b(c) and 301-c(b) of the Tax Law. Since Petitioner is not a governmental entity as described in section 1116(a)(1) or (2), Petitioner does not qualify for exemption from, or reimbursement of, the petroleum business tax.

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Sales tax is imposed on purchases of motor fuel by organizations qualifying for exemption from tax under section 1116(a) of the Tax Law, except for purchases by governmental entities described in section 1116(a)(1) or (2) of the Tax Law, or by a hospital, volunteer fire company or department, or voluntary ambulance service which is exempt pursuant to section 1116(a)(4). See section 1116(b)(5) of the Tax Law.

Since Petitioner is not a governmental entity, hospital, volunteer fire company or department, or voluntary ambulance service, Petitioner is not eligible to purchase motor fuel exempt from sales tax.

Although all of Petitioner's purchases of motor fuel are subject to sales tax at the time of purchase, Petitioner does, however, have exempt status pursuant to section 1116(a)(4) of the Tax Law. Petitioner, therefore, is eligible for a refund of sales taxes paid on fuel used in its vehicles in the course of its operations within the State. See section 1120(d) of the Tax Law.

DATED: October 19, 2006

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