

STATE OF NEW YORK

DIVISION OF TAX APPEALS

---

In the Matter of the Petition  
of  
**JAMES E. LANGTRY**  
for Revision of a Determination or for Refund of Sales and  
Use Taxes under Articles 28 and 29 of the Tax Law for the  
Period October 4, 2003.

---

: SMALL CLAIMS  
: DETERMINATION  
: DTA NO. 820302

Petitioner, James E. Langtry, 297 Sand Street Road, Hammond, New York 13646, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period October 4, 2003. A small claims hearing was held before James Hoefler, Presiding Officer, at the offices of the Division of Tax Appeals, 333 East Washington Street, Syracuse, New York 13202, on June 15, 2006 at 1:15 P.M. Petitioner appeared by Sherry A. Furgison, CPA. The Division of Taxation appeared by Mark F. Volk, Esq. (Anthony D. Militana).

The final brief in this matter was due by August 31, 2006 and it is this date that commences the three-month period for the issuance of this small claims determination.

***ISSUE***

Whether a pickup truck that petitioner purchased on October 4, 2003 was used predominantly in the production for sale of tangible personal property by farming, thereby entitling petitioner to a refund of sales tax paid on the truck.

***FINDINGS OF FACT***

1. On October 4, 2003, petitioner, James E. Langtry, purchased a new 2004 Chevrolet pickup truck. Petitioner paid New York State sales tax of \$2,209.00 on his purchase of the truck.

2. On January 27, 2004, petitioner filed an Application for Credit or Refund of Sales or Use Tax (“Application”) with the Division of Taxation (“Division”) seeking a refund of the \$2,209.00 in sales tax paid on the truck. The Application indicated that a refund of \$2,209.00 was due petitioner on the basis that the truck was “purchased to use for 100% dairy farming purposes.”

3. On March 15, 2004, the Division corresponded with petitioner seeking additional information concerning the Application filed on January 27, 2004. The Division’s letter of March 15, 2004 stated:

The sales tax law requires that the vehicle be used predominantly in the production of tangible personal property for sale, in order to qualify for the production exemption. Predominate [sic] use in production can be determined on either a time or mileage basis. Use of a daily log book which shows activities and the time or mileage on those activities will be an acceptable method for documenting the production usages of the vehicle and may be requested to substantiate the refund application. Accordingly, I will need the time or mileage that the vehicle is used, per year, in the following activities. If you elect to use time it must be used for each category. If you elect to use mileage, then that must be used for each category.

4. Petitioner responded to the Division’s letter, dated March 15, 2004, indicating that the truck was driven 5,000 miles per year and that this total could be divided among the following categories:

- (i) 3,776 miles picking up supplies for the farm at stores;
- (ii) 474 miles driving to meetings related to the farming operation (accountant, lawyer, insurance, etc.); and

(iii) 750 miles traveling between farms to check on workers, crops, livestock and farm buildings.

5. By letter dated March 29, 2004, the Division denied petitioner's Application for the following reason:

In order for New York State to grant a refund of sales tax paid on the purchase of your motor vehicle the vehicle would have to be used predominantly, that is, more than 50% of the time used, in the production phase of tangible personal property for sale as a result of farming. The questionnaire that was completed and returned to us indicates that this vehicle is used less than 50% of the time in the production phase of the farming operation.

6. As relevant to this proceeding, Tax Law § 1115(a)(6)(B) provides that motor vehicles which are used predominately, more than 50% of the time, in the production phase of farming are exempt from sales and use tax. The Tax Law further provides that to compute the percentage of use of a vehicle, the purchaser can, at his discretion, use either mileage or hours of use. In this proceeding, petitioner concedes that the truck in question does not qualify for the exemption from taxation afforded by Tax Law § 1115(a)(6)(B) if the percentage of use is computed using the mileage method. Petitioner now seeks to have the pickup truck's percentage of use computed on the basis of hours of use, which figure he asserts is more than 95% in the production phase of farming.

7. Petitioner, now 65 years of age, has been a farmer his entire life. During the period in question, he was engaged in dairy farming on a full-time basis, operating two separate farms with two full-time employees. One of the farms was petitioner's father's and the other was his grandfather's. The first farm is located across the street from petitioner's residence on Sand Street Road in Hammond, New York and the second farm, on Wooster Road in Hammond, New York, was located less than one mile from the first farm.

8. Dairy farming is a 24 hour, seven day a week, 365 day per year operation. Petitioner, on average, would use the truck to make four daily direct and uninterrupted trips between the two farms. Petitioner also used the truck to make weekly trips to purchase supplies for the farming operation and also for occasional trips to meet with his accountant. Petitioner detailed his use of the truck in an affidavit dated June 26, 2006 in the following manner:

I use this truck approximately 5,000 miles per year; 3,776 mi to pick up supplies for the barn. Average trip is 44 miles round trip which is approximately 1 hour of time. This would average 86 hours per year to pick up supplies for farm usage. I also drive to meetings and to my accountant's office which is located in Hammond to drop off payroll records (4 times per year) and accounting records to have my income tax return prepared. The total number of hours of truck usage for these purposes would equal 10 hours per year. The final truck usage is approximately 750 miles which is to travel between farms to check on workers, crops, livestock and farm buildings between my two farms (see Exhibit "A"). The total number of hours would equal 2,184 hours. Although the truck is not running this whole time, it is being used between these two barns to transport supplies, tend to cattle, and to harvest crops.

Based on the information above the farm business usage would equal 95.8% if it was based on number of hours used.

9. Petitioner's spouse also owns a motor vehicle which is available for petitioner's personal use.

#### ***SUMMARY OF THE PARTIES' POSITIONS***

10. Petitioner asserts that while the truck may not be running the entire time that it is located at either barn, it is nonetheless still being used in the production phase of farming. In his affidavit, petitioner argues that the truck is used for 2,184 hours per year, or six hours per day (2,184 ÷ 365), in farming and that this usage far exceeds the 96 hours a year the truck is used in a nonqualifying manner.

11. The Division asserts that if the truck "is not being used, the stationery time would not count either for or against the time factor in establishing production." The Division also

maintains that the record herein contains insufficient evidence to prove that the truck was used more than 50% of the time in the production phase of farming.

### ***CONCLUSIONS OF LAW***

A. Tax Law §1115 (a)(6)(B) provides, in relevant part, for an exemption from sales and use tax for motor vehicles used predominantly in the production phase of farming. Use is defined in Tax Law §1115 (a)(6)(B) as “any use of the motor vehicle on property [either] farmed . . . or in direct and uninterrupted trips between properties farmed . . . .” Said section further defines predominantly to mean “more than fifty percent of the motor vehicle’s use is [either] in the production phase of farming . . . .” In determining the percentage of a vehicle’s use in the production phase of farming, Tax Law §1115 (a)(6)(B) permits the computation to be made “on the basis of mileage or hours of use, at the discretion of the motor vehicle purchaser or user.”

B. Resolution of the controversy at issue turns on how the term “use” is interpreted. Petitioner believes that the law intended the word use to be interpreted in a broad manner. In petitioner’s view, if he takes the truck from one farm to the other in a farming capacity and the truck sits idle for an hour or two while he tends to livestock or performs some other farming duty, the entire time that the truck is at this location should be considered as used in the production phase of farming. The Division, on the other hand, holds a more restrictive view of use; essentially, if the truck is not running or moving, it is not in use.

C. I do not believe that the Legislature intended the term use to be defined in the restrictive manner proposed by the Division. Clearly, if the truck was driven to a field carrying material to mend a fence or feed for livestock and was turned off while these chores were performed, its use in this manner would certainly qualify as use in the production phase of farming, even though the truck was not running or moving. The record herein supports that

petitioner used the truck in a nonqualifying manner approximately two hours per week and it is not unreasonable to conclude that the truck was used more than two hours per week in a farming capacity. If petitioner used the truck in a farming capacity for a mere 20 minutes a day, or 140 minutes per week, its use would exceed the two hours per week used in nonqualifying activities. Accordingly, petitioner has established that the truck was used predominately in the production phase of farming and is therefore exempt from sales and use tax pursuant to Tax Law § 1115 (a)(6)(B).

D. The petition of James E. Langtry is granted and the Division of Taxation is directed to refund the sum of \$2,209.00 to petitioner, together with such interest as may be allowed by law.

DATED: Troy, New York  
November 30, 2006

/s/ James Hoefer  
PRESIDING OFFICER