

STATE OF NEW YORK

DIVISION OF TAX APPEALS

---

In the Matter of the Petition :  
of :  
**BEGNAL MOTORS CORPORATION** : DETERMINATION  
for Exemption from Mandatory Participation in the New : DTA NO. 820658  
York State Department of Taxation and Finance :  
Electronic Filing and Payment Program for the Period :  
September 1, 2005 through August 31, 2006. :  
:

---

Petitioner, Begnal Motors Corporation, 19 Maple Avenue, P.O. Box 350, Catskill, New York 12414, filed a petition for exemption from mandatory participation in the New York State Department of Taxation and Finance Electronic Filing and Payment Program for the period September 1, 2005 through August 31, 2006.

A hearing was held before Thomas C. Sacca, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on May 3, 2006 at 10:30 A.M., which date began the six-month period for the issuance of this determination. Petitioner appeared by Lawrence T. Begnal, president. The Division of Taxation appeared by Mark F. Volk, Esq. (Lori P. Antolick, Esq., of counsel).

***ISSUE***

Whether petitioner is exempt from mandatory participation in the New York State Department of Taxation and Finance's Electronic Filing and Payment (PrompTax) Program.

***FINDINGS OF FACT***

1. On July 15, 2005, the Division of Taxation (“Division”) issued to petitioner, Begnal Motors Corporation, a Notification of Required Participation in the Department of Taxation and Finance’s Electronic Filing and Payment (PrompTax) Program. The notification stated that petitioner had been selected for mandatory participation in the program for the period September 1, 2005 through August 31, 2006. The basis for the selection was petitioner’s reported sales tax liability being in excess of \$500,000.00 for the period June 2003 through May 2004.

2. Petitioner is an automobile dealership located in Catskill, New York.

3. The Division’s computation of petitioner’s reported sales tax liability for the period June 2003 through May 2004 was as follows:

<b>PERIOD</b>	<b>REPORTED TAX LIABILITY</b>
June 1, 2003 - August 31, 2003	\$161,683.03
September 1, 2003 - November 30, 2003	138,876.70
December 1, 2003 - February 29, 2004	131,461.25
March 1, 2004 - May 31, 2004	126,335.17
<b>TOTAL</b>	<b>\$558,356.15</b>

4. Petitioner’s reported tax liability for the period June 2004 through May 2005 was as follows:

<b>PERIOD</b>	<b>REPORTED TAX LIABILITY</b>
June 1, 2004 - August 31, 2004	\$90,624.52
September 1, 2004 - November 30, 2004	95,052.81
December 1, 2004 - February 28, 2005	77,569.74
March 1, 2005 - May 31, 2005	99,522.45
<b>TOTAL</b>	<b>\$362,769.52</b>

5. Petitioner's yearly reported sales tax liability over the past ten-year period beginning in 1996 has only exceeded \$500,000.00 once, in the sales and use tax year June 1, 2003 through May 31, 2004. Petitioner's reported sales tax liability for such ten-year period averaged approximately \$390,000.00 per year.

***CONCLUSIONS OF LAW***

A. Chapter 55 of the Laws of 1992 implemented a program for the electronic payment of certain sales and compensating use tax, prepaid sales and compensating use tax on motor fuel and diesel motor fuel and combined motor fuel and petroleum business tax liabilities by selected taxpayers. Under the program, electronic funds transfer ("EFT") replaces the physical movement and handling of paper checks with electronic instructions to financial institutions to transfer funds from the taxpayer's account to the Department of Taxation and Finance tax receipt account. The EFT program requires participants to make an additional payment of tax during the month in which the tax liability accrues via electronic funds transfer or certified check.

B. Tax Law § 10 provides as follows:

(b) Participation rules. (1) General. Notwithstanding any other provision of the law to the contrary, if, on or after June first of any year, during the June first through May thirty-first period which immediately precedes the previous June first through May thirty-first period, a taxpayer was liable for

(A) more than five hundred thousand dollars of state and local sales and compensating use taxes imposed by article twenty-eight and pursuant to the authority of article twenty-nine of this chapter where such taxes are administered by the commissioner, . . .

\* \* \*

then such taxpayer shall make payments of the taxes for which such dollar threshold was met by electronic funds transfer or certified check in accordance with the provisions of subdivision (c) of this section.

As petitioner's sales and compensating use tax liability for the period June 1, 2003 through May 31, 2004, which is the June first through May thirty-first period which immediately precedes the same previous period before the July 15, 2005 determination date, exceeds the \$500,000.00 threshold (*see*, Finding of Fact "3"), petitioner is required to participate in the New York State Department of Taxation and Finance's Electronic Filing and Payment (PrompTax) Program.

C. Tax Law § 10(b)(4)(A) provides for a hardship exception to participation in the PrompTax program as follows:

If a taxpayer having liability described in subparagraph (A) of paragraph one of this subdivision can demonstrate to the satisfaction of the commissioner that (i) for the two most recent consecutive quarters, the state and local sales and compensating use taxes properly payable by such taxpayer are less than fifty percent of the state and local sales and compensating use taxes properly payable by such taxpayer for the comparable two quarters of the preceding year and (ii) the sum of such taxpayer's state and local sales and compensating use taxes liability for such most recent consecutive quarters together with the product of the state and local sales and compensating use taxes properly payable by such taxpayer for the two consecutive quarters immediately preceding the quarters referred to in clause (i) of this subparagraph multiplied by the percentage arrived at under such clause is less than two hundred fifty thousand dollars in amount, then such taxpayer shall not be required to participate in the program prescribed by this section for the remaining quarters of the sales tax year ending on the next May thirty-first and for the immediately succeeding four sales tax quarters.

As the determination of whether petitioner was required to participate in the PrompTax program was made in July 2005, the two most recent consecutive quarters are those which ended on February 28, 2005 and May 31, 2005. The sales and compensating use tax properly payable by petitioner for these two quarters totaled \$177,092.19 (\$77,569.74 + \$99,522.45). This figure is to be compared to the comparable two quarters of the preceding year, the quarters ended February 29, 2004 and May 31, 2004, which have a total sales and compensating use tax properly payable by petitioner of \$257,796.42 (\$131,461.25 + \$126,335.17). Dividing the tax payable for the two most recent sales and use tax quarters by the tax payable for the comparable

two quarters of the preceding year ( $\$177,092.19/\$257,796.42 = .69$ ), results in a determination in which the sales and use taxes payable by petitioner for the two most recent consecutive quarters is greater than 50 percent of the sales and use taxes payable by petitioner for the two comparable quarters of the preceding year and, therefore, petitioner does not meet the hardship test provided by Tax Law § 10(b)(4)(A)(i). In addition, petitioner fails the second portion of the test provided in Tax Law § 10(b)(4)(A)(ii) as the sum of the sales and use tax liability for the two most recent consecutive quarters ( $\$177,092.19$ ) plus the product of the sales and use tax liability for the two consecutive quarters immediately preceding the two most recent consecutive quarters (periods ended August 31, 2004 and November 30, 2004) multiplied by the percentage previously arrived at ( $\$185,677.33 \times .69 = \$128,117.36$ ) is greater than  $\$250,000.00$  ( $\$177,092.19 + \$128,117.36 = \$305,209.55$ ).

D. The petition of Begnal Motors Corporation is denied, and the Notification of Required Participation in the Department of Taxation and Finance's Electronic Filing and Payment (PrompTax) Program is sustained for the period September 1, 2005 through August 31, 2006.

DATED: Troy, New York  
October 26, 2006

/s/ Thomas C. Sacca  
ADMINISTRATIVE LAW JUDGE