

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
<b>EASTERN PARAMEDICS, INC.</b>	:	
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 September 1, 2003 through November 30, 2005.	:	
	:	DETERMINATION
	:	DTA NOS. 822836 AND 822837
In the Matter of the Petition	:	
of	:	
<b>LASALLE AMBULANCE, INC.</b>	:	
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 March 1, 2003 through February 28, 2006.	:	
	:	

Petitioner Eastern Paramedics, Inc., 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 September 1, 2003 through November 30, 2005.

Petitioner LaSalle Ambulance, Inc., 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 March 1, 2003 through February 28, 2006.

On August 10 and 14, 2009, respectively, the Division of Taxation, appearing by Daniel Smirlock, Esq. (Osborne K. Jack, Esq., of counsel), and petitioners, appearing by Harris Beach

PLLC (Pietra G. Lettieri, Esq., of counsel), waived a hearing and submitted these matters for determination based on documents and briefs to be submitted by March 16, 2010, which date commenced the six-month period for issuance of this determination (Tax Law § 2010[3]). After due consideration of the documents and arguments submitted, Thomas C. Sacca, Administrative Law Judge, renders the following determination.

### ***ISSUES***

I. Whether petitioners' purchases of medical supplies used on ambulances qualify for the Qualified Empire Zone Enterprise sales tax exemption.

II. Whether the medical supplies are so intrinsically linked to the operation of the ambulances as to qualify for the Qualified Empire Zone Enterprise sales tax exemption.

### ***FINDINGS OF FACT***

1. Petitioners, LaSalle Ambulance, Inc., and Eastern Paramedics, Inc., are subsidiaries of Rural Metro Corporation, located in Scottsdale, Arizona. Rural Metro generally provides Advanced Life Support (ALS) and Basic Life Support (BLS) ambulance services. Each ambulance is staffed with either two paramedics or one paramedic and an emergency medical technician and is equipped with ALS equipment (such as cardiac monitors/defibrillators, advanced airway equipment and oxygen delivery systems) as well as pharmaceuticals and medical supplies. Rural Metro's ambulance services encompass both emergency response and nonemergency response services, including critical care and interfacility transportation.

2. LaSalle is a 911 responder for emergency medical services calls with administrative offices located at 481 William Gaiter Parkway, Buffalo, New York. LaSalle's dispatch center, fleet maintenance, administrative offices and billing offices are located at this facility. LaSalle also operated bases in East Aurora, Concord, Blasdell, Angola, Niagara Falls, Hamburg and

Cheektowaga, New York. Its Buffalo office qualified for empire zone enterprise credits as of July 1, 2002.

Eastern is also a 911 responder for emergency medical services calls with administrative offices located at 488 West Onondaga Street, Syracuse, New York. Eastern also operated bases located in Auburn, Chittenango, Brewerton, Nelliston, Herkimer and Cobleskill, New York. Its Syracuse and Auburn locations qualified for empire zone enterprise credits as of November 1, 2002.

3. Upon arrival at an emergency medical service call, petitioners' crew members will work to stabilize patients who may have medical or traumatic emergencies. They will deploy portable life support equipment, ascertain the patient's medical condition and, if required, administer ALS interventions, including tracheal intubation, cardiac monitoring, defibrillation of certain cardiac dysrhythmias and the administration of medications and intravenous solutions under the direction of a physician. The crew also may perform BLS services, including cardiopulmonary resuscitation (CPR), basic airway management and basic first aid.

4. While one crew member monitors and continues treating the patient, the other crew member drives the ambulance to a hospital designated either by the patient or applicable medical protocol. While on scene or en route, the ambulance crew alerts the hospital regarding the patient's medical condition, and if necessary, the attending ambulance crew member consults an emergency physician as to treatment. Upon arrival at the hospital, the patient generally is taken to the emergency department where care is transferred to the emergency department staff.

5. Depending on the emergency medical dispatch system used in a designated service area, the public authority that receives 911 emergency medical calls either dispatches petitioners' ambulances directly from the public communication center or communicates information

regarding the location and type of medical emergency to petitioners' communication centers, which in turn dispatch ambulances to the scene. In Syracuse, 911 callers are sent directly to Eastern by Onondaga County 911. Syracuse employees of Eastern perform all medical pre-arrivals on the phone with the caller then dispatch one of their vehicles.

6. Nonemergency services are typically controlled by facility discharge planners, nurses or physicians who are responsible for requesting ambulance services. Nonemergency medical transportation services may be scheduled in advance or provided on an as-needed basis.

Petitioners utilize either ALS or BLS ambulance units to provide nonemergency ambulance services, depending on the patient's medical condition, to and from residences, hospitals, nursing homes, long-term care centers and other health care facilities. These services are administered by an EMT or paramedic.

7. The following activities are conducted at petitioners' operations centers in the Buffalo and Syracuse empire zones: purchasing, product receiving, warehousing of products, purchasing decisions, finance, billing, human resources, training, management, fleet maintenance, contract negotiations for customers and dispatching.

8. All of LaSalle's calls come into the William L. Gaiter facility and the information is shared with ambulances from dispatch. All dispatchers are located at the William L. Gaiter address and direct the work of LaSalle ambulances. LaSalle ambulances drive hundreds of miles per day traveling throughout western New York, in and out of the City of Buffalo and other locations throughout their shifts. Ambulances are housed at both the Buffalo facility located in the empire zone and at the outlying bases, and begin and end their shifts from their respective locations. However, all ambulances are dispatched, directed and coordinated out of the centralized operations center in the Buffalo empire zone. All ambulances come into the Buffalo

operations center on a regular basis (minimum of monthly) to receive supplies, mechanical work, inspections and cleaning.

9. All calls for service come into the Eastern dispatch center at 488 West Onondaga Street and all vehicles are contacted by the dispatch center at this same location. All Eastern vehicles are stocked from here, are stored here when not in use and are serviced here. In addition, all of Eastern's customer service (post-bill activity) is provided from this location.

10. Eastern's ambulances start and end each day at either the Syracuse operations center or its outlying bases. Each ambulance is outfitted and supplied with appropriate medical supplies on a daily basis, all dispatches are handled and communicated through the operations centers, and all repair and maintenance to the ambulances are performed on-site.

11. All ambulance supplies are ordered from Rural Metro's central distribution center in Omaha, Nebraska, and shipped to Eastern's 488 West Onondaga Street facility and LaSalle's 481 William L. Gaiter Parkway facility. Eastern and LaSalle are charged for the cost of the items shipped, and a markup is added to the cost to cover various administrative expenses. The supplies are then distributed to the outlying locations, with these bases being charged the same cost as incurred by Eastern and LaSalle, with no further markups imposed. Rural Metro's vehicles stock the necessary equipment to meet the requirements of Article 30 and Part 18 of the New York State Public Health Law, and with respect to Eastern, the requirements established by the Central New York Regional Emergency Medical Services Council (CNY REMSCO). Petitioners' ambulance supplies are used in conjunction with medical service calls.

12. On January 3, 2006, the Division of Taxation (Division) sent letters to petitioners stating that sales and use tax field audits of the business operations were to be conducted for the period March 1, 2003 through November 30, 2005. The Division's letter requested that all of the

petitioners' books and records pertaining to the sales tax liability for the audit period be available for review. Among the records specifically requested in an attached records requested list were the sales tax returns, New York State corporation tax returns, sales invoices, exemption documents, fixed asset purchase and sales invoices, expense purchase invoices, bank statements, cash receipts journal, cash disbursements journal, federal income tax returns and depreciation schedules.

On February 13, 2007, the Division sent a second letter to petitioner LaSalle Ambulance, Inc., stating that the audit period had been expanded to March 1, 2003 through February 28, 2006. The Division's letter requested that all of the business's books and records pertaining to the sales tax liability for the additional period be made available for review as well. A records requested list similar to the one sent on January 3, 2006 was referenced in this second letter.

13. Petitioner LaSalle Ambulance, Inc., executed seven consents extending period of limitations for assessment of sales and use taxes under Articles 28 and 29 of the Tax Law that collectively extended the period in which to assess sales and use taxes due for the period March 1, 2003 through February 28, 2005 to March 20, 2008.

Petitioner Eastern Paramedics, Inc., executed three consents extending period of limitations for assessment of sales and use taxes under Articles 28 and 29 of the Tax Law that collectively extended the period in which to assess sales and use taxes due for the period March 1, 2003 through May 31, 2004 to June 20, 2007.

14. The Division conducted a detailed audit of Eastern's expense distribution account and determined that Eastern purchased and received its supplies into its Syracuse location and then distributed those supplies to its outlying bases. The outlying bases were charged the cost of

the items in the same amount as that incurred by Eastern. Each location then accrued use tax at reduced empire zone sales tax rates rather than at the applicable sales tax rates for their area.

The auditor determined that the purchases at issue were not entitled to the claimed Qualified Empire Zone Enterprise (QEZE) exemption due to the fact that the medical supplies, such as band-aids, gauzes, syringes, etc., were used outside the qualified zone. Specifically, the auditor noted that ambulances in the outlying bases began and ended their routes from those bases. The auditor concluded that the supplies shipped to the outlying bases were not used within the qualified empire zone since they were used while Eastern's ambulances were responding to calls outside the zone.

Based on the foregoing, the auditor assessed tax at the applicable rates for each base, allowed credit for taxes accrued at reduced empire zone rates and determined additional tax due from Eastern's expense distribution account of \$26,289.73, plus interest.

15. The auditor also conducted a detailed audit of LaSalle's expense distribution account and determined that LaSalle purchased and received its supplies into its Buffalo location and then distributed those supplies to its outlying bases. The outlying bases were charged the cost of the items in the same amount as that incurred by LaSalle. However, no tax was accrued or paid by LaSalle's outlying bases.

As with the findings with regard to Eastern, the auditor discovered that LaSalle's ambulances originated and terminated from the outlying bases and that the supplies at issue were consumed outside the QEZE location.

Thus, the auditor assessed tax at the applicable rates and determined additional tax due from LaSalle's expense distribution account of \$108,896.30, plus interest.

16. On May 14, 2007, the Division issued to Eastern a Notice of Determination of sales tax due in the amount of \$26,289.73, plus interest, for the period September 1, 2003 through November 30, 2005. On September 27, 2007, the Division issued to LaSalle a Notice of Determination of sales tax due in the amount of \$108,869.30, plus interest, for the period March 1, 2003 through February 28, 2006.

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

17. Petitioners initially claim that the medical supplies are used or consumed directly or predominantly in an area designated as an empire zone. According to petitioners, from the moment that the ambulance supplies are delivered to the Buffalo and Syracuse operation centers, they are in “use” as such term is contemplated by section 1115(z)(1) of the Tax Law. This “use” occurs in the empire zones because the supplies are inventoried, organized, replenished and distributed to the ambulances from a central operational hub, which is located in an empire zone. Petitioners acknowledge that the supplies may be consumed outside of the empire zones, but that the overriding “use,” which begins in the operation centers, directly and predominantly occurs within the empire zones.

Petitioners next claim that the ambulance supplies should be considered exempt as tangible personal property related to a motor vehicle that is used directly and predominantly in an empire zone. According to petitioners, the supplies are intrinsic to the operation and medical nature of the ambulances, and are therefore related to such motor vehicle in the same manner as a muffler, tire or engine is related to a passenger vehicle.

18. It is the position of the Division that the supplies were consumed outside the qualified empire zones at the locations where petitioners’ ambulances provided medical services. The Division also claims that the medical supplies are not intrinsically related to the ambulances



in the same way as motor fuel, tires, batteries, etc. In addition, the Division states that as the ambulances were not used predominantly in a qualified empire zone, the tangible personal property associated with the use of such vehicles does not qualify for the sales tax exemption provided by Tax Law § 1115(z).

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

A. Sales tax is imposed upon the receipts of every retail sale of tangible personal property except as otherwise provided (Tax Law § 1105[a]).

B. It is well settled that tax exemption statutes are strictly construed against the taxpayer and that exemptions must be clearly indicated by the statutory language (*see Matter of Fagliarone, Grimaldi & Associates v. Tax Appeals Tribunal*, 167 AD2d 767, 563 NYS2d 324 [3d Dept 1990]).

C. Section 1115(z) provides as follows:

Receipts from the retail sale of tangible personal property described in subdivision (a) of section eleven hundred five of this article, receipts from every sale of services described in subdivisions (b) and (c) of such section eleven hundred five and consideration given or contracted to be given for, or for the use of, such tangible personal property or services shall be exempt from the taxes imposed by this article where such tangible personal property or services are sold to a qualified empire zone enterprise, provided that (i) such property or property upon which such a service has been performed or such service (other than a service described in subdivision (b) of section eleven hundred five) is directly and predominantly, or such a service described in clause (A) or (D) of paragraph one of such subdivision (b) of section eleven hundred five is directly and exclusively, used or consumed by such enterprise in an area designated as an empire zone pursuant to article eighteen-B of the general municipal law with respect to which such enterprise is certified pursuant to such article eighteen-B, or (ii) such a service described in clause (B) or (C) of paragraph one of such subdivision (b) of section eleven hundred five is delivered and billed to such enterprise at an address in such empire zone; provided, further, that, in order for a motor vehicle, as defined in subdivision (c) of section eleven hundred seventeen of this article, or tangible personal property related to such a motor vehicle to be found to be used predominantly in such a zone, at least fifty percent of such motor vehicle's use shall be exclusively within such zone or at least fifty percent of such motor

vehicle's use shall be in activities origination or termination in such zone, or both; and either or both such usages shall be computed either on the basis of mileage or hours of use, at the discretion of such enterprise. For purposes of this subdivision, tangible personal property related to such a motor vehicle shall include a battery, diesel motor fuel, an engine, engine components, motor fuel, a muffler, tires and similar tangible personal property used in or on such a motor vehicle.

D. Statutes creating exemptions from tax are to be strictly construed (*see Matter of Grace v. New York State Tax Commn.*, 37 NY2d 193, 371 NYS2d 715 [1975], *lv denied* 37 NY2d 708, 375 NYS2d 1027 [1975]; *Matter of Blue Spruce Farms v. New York State Tax Commn.*, 99 AD2d 867, 472 NYS2d 744 [1984], *affd* 64 NY2d 682, 485 NYS2d 526 [1984]).

In addition, it is well established that the interpretation given to a statute by the agency authorized with its enforcement should generally be given weight and judicial deference if the interpretation is not irrational, unreasonable or inconsistent with the statute (*Matter of Trump-Equitable Fifth Avenue Co. v. Gliedman*, 62 NY2d 539, 478 NYS2d 846 [1984]). However, in addition, the statutory language providing the exemption must be construed in a practical fashion with deference to the legislative intent behind the exemption (*see Majewski v. Broadalbin-Perth Cent. School Dist.*, 91 NY2d 577, 673 NYS2d 966 [1988]; *Matter of Qualex, Inc.*, Tax Appeals Tribunal, February 23, 1995). To determine legislative intent, courts must first look at the literal reading of the act itself (*see McKinney's Cons Laws of NY*, Book 1, Statutes § 92).

E. As the parties have indicated, the determination in these matters depends upon whether the medical supplies purchased by petitioners were directly and predominantly "used" in the designated empire zones. Tax Law § 1101(b)(7) defines the term "use", in part, as follows:

The exercise of any right or power over tangible personal property or over any of the services which are subject to tax under section eleven hundred ten of this article or pursuant to the authority of article twenty-nine of this chapter, by the purchaser thereof, and includes, but is not limited to, the receiving, storage or any keeping or retention for any length of time, withdrawal from storage, any installation, any affixation to real or personal property, or any consumption of

such property or of any such service subject to tax under such section eleven hundred ten or pursuant to the authority of such article twenty-nine. . . .

The Sales and Use Tax Regulations (20 NYCRR 526.9[b]) define some of the terms used in Tax Law § 1101(b)(7):

- (1) *Receive* is to obtain or gain possession of tangible personal property for any purpose whatsoever by means of purchase.
- (2) *Storage, keeping or retention* for any length of time is to hold tangible personal property for any purpose whatsoever by the purchaser.
- (3) *Withdrawal from storage* is to remove from storage any tangible personal property which was so stored for any purpose whatsoever.
- (4) *Installation of tangible personal property* is to install such property by any means for any purpose whatsoever.
- (5) *Affixation of tangible personal property to real or personal property* is the attachment of such property to other property by any means for any purpose whatsoever.
- (6) *Any consumption of tangible personal property* is to consume such property by any means for any purpose whatsoever.

Predominantly is generally defined to mean over fifty percent (*see e.g.* 20 NYCRR 528.13[c][4]).

F. It is the position of the Division that the use of the medical supplies occurs outside the empire zone at the time when and where the ambulances were providing medical services on emergency calls. This argument appears to be contrary to the definition of “use” as provided in both the Tax Law and the sales and use tax regulations. According to the Tax Law, the exercise of any right or power over tangible personal property, including, but not limited to, the receiving, storage or any keeping or retention for any length of time of such tangible personal property constitutes a use of such property. The regulations define “receiving” as obtaining or gaining possession of tangible personal property and “storage, keeping or retention” for any length of

time as holding tangible personal property. In the present matter, all of the medical supplies were purchased from Rural Metro's central distribution center in Omaha, Nebraska, received at petitioners' administrative bases located in the Buffalo and Syracuse empire zones, and then inventoried, organized and distributed to the ambulances located at the empire zone locations or to the ambulances stationed at the outlying bases. It is clear that petitioners receive, store and distribute these medical supplies at and from their empire zone locations, and thus the "use" of such supplies occurs predominantly within the qualified empire zones. Therefore, petitioners' purchases of the medical supplies are exempt from the imposition of sales and use tax pursuant Tax Law § 1115(z).

G. Issue II is moot.

H. The petitions of Eastern Paramedics, Inc. and LaSalle Ambulance, Inc. are granted, and the notices of determination dated May 14, 2007 and September 27, 2007 are hereby canceled.

DATED: Troy, New York  
September 2, 2010

/s/ Thomas C. Sacca  
ADMINISTRATIVE LAW JUDGE