

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

TSB-A-00(39)S
Sales Tax
October 12, 2000

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S000504A

On May 4, 2000, the Department of Taxation and Finance received a Petition for Advisory Opinion from Maroone Automotive Center, Inc., S-4141 Southwestern Blvd., Orchard Park, NY 14127.

Petitioner inquires as to the correct amount of sales tax due when a customer (lessee), residing in an 8% taxing jurisdiction, enters into a 36-month lease of a motor vehicle with monthly payments of \$200.00 and:

(A) the customer pays its tax due up-front;

(B) the customer does not have the money available to pay the tax up-front, so the lessor pays the tax due on the customer's behalf and this amount is rolled/included in the total lease payments in the form of increased monthly payments.

Applicable Law and Regulations

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(3) Receipt. The amount of the sale price of any property and the charge for any service taxable under this article, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts. . . .

* * *

(5) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume . . . conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor. . . .

Section 1105(a) of the Tax Law imposes sales tax on the receipts from every retail sale of tangible personal property, except as otherwise provided.

Section 1111(i) of the Tax Law provides, in part:

(A) . . . with respect to any lease for a term of one year or more of (1) a motor vehicle, as defined in section one hundred twenty-five of the vehicle and traffic law, with a gross vehicle weight of ten thousand pounds or less . . . or an option to renew such a lease or a similar contractual provision, all receipts due or consideration given or contracted to be given for such property under and for the entire period of such lease, option to renew or similar provision, or combination of them, shall be deemed to have been paid or given and shall be subject to tax, and any such tax due shall be collected, as of the date of first payment under such lease, option to renew or similar provision, or combination of them, or as of the date of registration of such property with the commissioner of motor vehicles, whichever is earlier. . . . For purposes of this subdivision, (1) a lease for a term of one year or more shall include any lease for a shorter term which includes an option to renew or other like provision (or more than one of such option or other provision) where the cumulative period that the lease, with or without such option or provision, may be in effect upon exercise of such option or provision is one year or more and (2) receipts due and consideration given or contracted to be given under any such lease or other provision for excess mileage charges shall be subject to tax as and when paid or due. (Emphasis added)

* * *

(C) Any receipts due or consideration given or contracted to be given under an option to renew a lease of a motor vehicle described in this subdivision or similar contractual provision, or combination of them, exercised as part of any such lease between the same lessor and the same lessee with respect to the same motor vehicle or vehicles, where such lease or any option to renew such a lease or any other similar contractual provision was subject to tax in accordance with the provisions of this subdivision, shall not be subject to the tax imposed under the provisions of article twenty-eight-A of this chapter.

Section 527.15 of the Sales and Use Tax Regulations provides, in part:

(a) Section 1111(i) of the Tax Law provides special rules for the payment of sales and use tax on certain leases of motor vehicles, vessels and noncommercial aircraft. Rather than the tax being due upon each periodic lease payment, the Tax Law provides that with respect to the leases described in this section the tax is due at the inception of the lease on the total amount of the lease payments for the entire term of the lease. (Emphasis added)

* * *

(b)(6) With respect to a lease, renewal option or combination of them . . . inception of the lease means the earlier of:

(i) the date of the first payment under the lease, renewal option or combination of them; or

(ii) the date of registration of the property so leased, with the Commissioner of Motor Vehicles.

(c) *Special rules for computing tax.*

(1) (i) With respect to the lease of a motor vehicle . . . for a period of one year or more, all receipts due or consideration given or contracted to be given for such property under, and for the entire period of, the lease . . . are deemed to have been paid or given and are subject to tax, and any tax shall be collected, at the inception of the lease. Renewal options are included in the computation of tax, whether or not they are exercised or are for a period of one year or more, individually or cumulatively. . . .

Example 1: The leasing division of a New York State motor vehicle dealer offers a customer (who is a resident of a seven percent taxing jurisdiction) a two-year motor vehicle lease agreement with an option to renew the lease for an additional two years. The agreement requires the lessee to make monthly payments of \$350. In order to exercise the renewal option, the lessee must pay a one time fee of \$500. The amount of sales tax the lessor is required to collect from the lessee at the inception of the lease is computed as follows:

Monthly lease payment		\$ 350
Original no. of months in lease	24	
Plus - no. of months of renewal	+ 24	
Total term of lease	x 48	
Subtotal		\$16,800
Plus - cost of renewal option		+\$ 500
Receipts subject to tax		\$17,300
Applicable tax rate		x 7%
New York State and local sales and use tax due		\$ 1,211

* * *

(3) (i) Where an agreement to lease a motor vehicle for a term of one year or more is entered into, the lessor must collect the tax at the inception of the lease, based on the rate of tax in effect for the local jurisdiction in which the vehicle is regularly garaged or stored.

* * *

(4) With respect to any lease for a term of one year or more of a motor vehicle . . . the tax to be collected on such lease at its inception is based on the applicable tax rate times all receipts due or consideration given or contracted to be given for the leased property under and for the entire term of the lease, renewal option or combination of them.

* * *

(6) Excess mileage and similar charges. Receipts from the following charges are subject to tax at the time they are paid by or are due from the lessee:

- (i) an excess mileage or use charge;
- (ii) an excess wear charge; or
- (iii) a damage assessment, repair or any similar charge.

* * *

(g) *Miscellaneous.* Any receipts due or consideration given or contracted to be given under an option to renew a lease of a motor vehicle described in this section or a similar contractual provision or combination of them, exercised as part of any such lease between the same lessor and lessee with respect to the same motor vehicle or vehicles, where such lease or any option to renew such lease or any other similar contractual provision is subject to tax in accordance with this section and section 1111(i) of the Tax Law shall not be subject to the Special Tax on Passenger Car Rentals imposed pursuant to the provisions of article 28-A of the Tax Law.

Opinion

Prior to June 1, 1990, monthly car lease payments were subject to the imposition of sales tax as they were made. Legislation which became effective June 1, 1990, added Section 1111(i) of the Tax Law which contains special rules for computing the sales tax on long-term (one year or more)

motor vehicle leases. These rules require that the sales tax be computed on the total amount to be paid to the lessor over the term of the lease; and that the tax be collected from the lessee on the date of the first payment under the lease or at the time the vehicle is registered with the Department of Motor Vehicles, whichever is earlier.

Even though the lease payments are made over the course of the lease term, the tax is due and payable in full on the total lease payments at the start of the lease. An up-front payment of tax is required, and there are no provisions in the Tax Law under which a customer is allowed to “rollover” or include the tax due in its monthly lease payments (see Technical Services Bureau Memorandum, 1990 Amendments to the Sales Tax Law, May 15, 1991, TSB-M-91(1)S).

Therefore, with respect to Petitioner’s inquiry, in Situation (A) the sum of the aggregate lease payments of \$7200.00 (\$200.00 per month X 36 months) is the proper base for determining the tax due at the inception of the lease. Since 8% is the combined State and local tax rate in the locality where the vehicle is regularly garaged or stored, i.e., the customer’s residential address, the amount of tax due and payable up-front at the inception of the lease is \$576.00 (\$7200 X .08).

On the other hand, when the sales tax is paid by the lessor and financed in the lease payments as described in Situation (B), the amount of the monthly payment and total amount due under the lease is increased. As the sales tax is based on the total amount due, the sales tax due is now increased. The aggregate, increased lease payments are the proper base for determining the tax. The proper amount of tax must be computed on the sum of these total lease payments. See Section 527.15(c)(4) of the Sales and Use Tax Regulations.

With regard to the given facts of Situation (B), the following example illustrates a method which the lessor could use in order to pay over the proper amount of tax and collect gross lease payments calculated to include reimbursement for such tax paid on behalf of the customer (lessee).

$$\begin{aligned} \text{Total payments} &= \frac{1}{1 - \text{tax rate}} \times \$7200 \\ &= \frac{1}{1 - .08} \times \$7200 \\ &= \frac{1}{.92} \times \$7200 = \$7,826.09 \end{aligned}$$

$$\begin{aligned} \text{Tax to be paid by lessor} &= \$7,826.09 \times .08 = \underline{- \$626.09} \\ \text{Thus, lessor recovers desired total lease payments of} & \quad \$7,200.00 \end{aligned}$$

The lessor must pay tax due of \$626.09 on behalf of the customer (lessee) at the inception of the lease on total lease payments of \$7,826.09. It is noted that this example does not reflect any time

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value of money. Any factor used to increase the amount that the customer pays to the lessor as part of the lease payment would also increase the amount subject to tax and should be considered accordingly.

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/s/
Jonathan Pessen
Tax Regulations Specialist III
Technical Services Division

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