

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

TSB-A-06(24)S
Sales Tax
October 19, 2006

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S050726A

On July 26, 2005, the Department of Taxation and Finance received a Petition for Advisory Opinion from UBVL Auto LT, 111 Huntington Avenue, Suite 400, Boston, MA 02199-8001.

The issues raised by Petitioner, UBVL Auto LT, regarding the computation and payment of New York sales tax on long-term motor vehicle leases are:

1. Whether the motor vehicle dealer, not the company that purchases the lease (the leasing company) from the dealer, is considered to be the original lessor.
2. Whether the motor vehicle dealer, not the leasing company, is liable for and responsible for collecting and remitting the sales tax.
3. Whether a capitalized cost reduction, representing the equity in a customer's traded-in vehicle, is subject to New York State sales tax.

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

Petitioner is a business trust with its headquarters in Boston, Massachusetts, and with no offices in New York. Petitioner offers a long-term lease program through local independent motor vehicle dealerships throughout the United States. All leases are for terms in excess of 12 months and provide the customer (the lessee) with an option to purchase the motor vehicle at the end of the lease.

A motor vehicle dealership (dealer) negotiates the lease of a motor vehicle with a lessee using Petitioner's program. All negotiations between prospective lessees and dealers take place at the dealer's locations. A dealer completes and executes a standard Petitioner lease agreement with the lessee. The lease agreement does not use Petitioner's name as the lessor, but rather the dealer is named the original lessor, and Petitioner's name is preprinted as the assignee. At the time the lease is executed, the dealer holds title to the leased vehicle and the dealer receives the first lease payment from the lessee. Under Petitioner's program, Petitioner purchases the leased vehicle from the dealer upon execution of the lease agreement, and the lease agreement is immediately assigned to Petitioner as the lessor. Petitioner has the right to refuse assignment of any lease not adhering to Petitioner's standards.

In the normal course of business, the dealer will accept the lessee's personally owned vehicle as a trade-in. The equity from the trade-in will be applied to the lease agreement as a

capitalized cost reduction. A capitalized cost reduction is similar in effect to an advance payment that reduces the amount of each future lease payment. The dealer, who will resell the trade-in vehicle, receives title to and possession of the vehicle.

Petitioner pays the dealer the purchase price of the leased vehicle, reduced by any funds collected by the dealer from the lessee, including the first lease payment and acquisition fees, and capitalized cost reductions. The lessee makes all future lease payments directly to Petitioner.

Applicable law and regulations

Section 1101(b)(3) of the Tax Law defines *receipt* as follows:

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 . . . but excluding any credit for tangible personal property accepted in part payment and intended for resale

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

Notwithstanding any contrary provisions of this article or other law, with respect to any lease for a term of one year or more of . . . 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. . . .

Section 526.5(f) of the Sales and Use Tax Regulations provides, in part:

Trade-in. Any allowance or credit for any tangible personal property accepted in part payment by a vendor on the purchase of tangible personal property or services and intended for resale by such vendor shall be excluded when arriving at the receipt subject to tax. Only the net sale price of tangible personal property or the charge for services would be subject to tax.

Section 527.15(a) of the Sales and Use Tax Regulations provides:

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.

Section 527.15(c)(5) of the Sales and Use Tax Regulations provides:

Where the lessor accepts tangible personal property for resale as a trade-in on a lease agreement, the total receipts do not include the value of the trade-in.

Opinion

Under the circumstances presented by Petitioner, motor vehicle dealers enter into lease agreements with customers (lessees) for the lease of motor vehicles. The dealer negotiates the lease and accepts, as partial payment, a lessee's trade-in vehicle with the intent of reselling it. The dealer also receives the first lease payment from the lessee. Petitioner then purchases the vehicle and is assigned the lease agreement.

Based upon the facts presented, the dealer is the original lessor, who then sells the vehicle and assigns the lease to Petitioner after the lease agreement is executed and after it has received the first lease payment. Under section 1111(i) of the Tax Law, the entire payment due under a long-term lease of a motor vehicle with a gross vehicle weight of 10,000 pounds or less for a term of one year or more is deemed to have been paid and is subject to sales tax as of the date of first payment under the lease or the date of registration of the motor vehicle, whichever is earlier. Accordingly, pursuant to section 1111(i), the dealer is responsible for collecting the sales tax due on the lease at the time of receiving the first lease payment from the lessee and remitting such tax to the Tax Department with its sales tax return. It should be noted that Petitioner could be liable for sales tax if it actually collected sales tax from lessees. See *BMW Financial Services NA, Inc. and Financial Services Vehicle Trust*, Adv Op Comm T&F, October 5, 2000, TSB-A-00(37)S.

The dealer accepts trade-ins of lessee owned vehicles. The lessee's equity in the traded vehicle is applied as a capital cost reduction in computing the amount of the lessee's periodic lease payments. Pursuant to section 1101(b)(3) of the Tax Law and sections 526.5(f) and 527.15(c)(5) of the Sales and Use Tax Regulations, the capitalized cost reduction representing the value of a lessee's trade-in is not subject to sales tax since the dealer accepts the lessee's vehicle as a trade-in with the intent of reselling the vehicle and applies the amount of the capitalized cost reduction against the consideration due for the leased vehicle. See *BMW Financial Services NA, Inc. and Financial Services Vehicle Trust*, *supra*.

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It should be noted that Petitioner will be responsible for collecting and remitting any sales tax that is due on the option purchase price when a lessee exercises the purchase option or on any amount paid by the lessee on any extensions of the lease.

DATED: October 19, 2006

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