

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-15(50)S
Sales Tax
December 11, 2015

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S130903A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether: (1) New York State requires sales tax to be paid at the time of the lease of a car on the total lease payments due under the terms of the lease; (2) sales tax on a car leased in New York State is legally imposed on the lessee; (3) New York State allows refunds of sales tax paid at lease inception if the car is removed from the State and registered in a different state; and (4) the sales tax collected from Petitioner on his lease has been paid over to New York State.

We conclude that Petitioner was properly charged sales tax on the total amount of lease payments due at the inception of the lease and he is not entitled to a refund of the New York State and local sales tax paid on his leased vehicle when he moved out of the state.

Facts

While living in New York State, Petitioner leased a new automobile in May 2011. According to the terms of the lease, Petitioner was charged New York State and local sales tax on the total amount of the lease payments of the vehicle. In February 2012, Petitioner relocated to Florida (where he currently resides) and registered his automobile with the Florida DMV. Since May 2012, the leasing bank has added Florida State sales tax to each monthly lease payment.

Analysis

Issue 1 - Is New York State sales tax required to be paid at the time of the lease of a car on the total lease payments due under the terms of the lease?

Sales tax applies to all receipts due or consideration given or contracted to be given on a car lease for a term of one year or more at the inception of the lease. The tax is due on the date of the first payment under the lease. *See* Tax Law § 1111(i)(A).

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...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; 20 NYCRR § 527.15(a).

Issue 2 - Is sales tax on a car leased in New York State legally imposed on the lessee?

Yes. New York State and local sales tax is legally imposed on the customer, which in the case of a vehicle lease, is the lessee. *See* Tax Law § 1132, 20 NYCRR § 525.2(a)(4). However, the lessor of the vehicle is a “person required to collect tax” and must pay over the tax to the State. *See* Tax Law § 1131; 20 NYCRR § 527.15(c)(3)(i).

Issue 3 - Does New York allow refunds of sales tax paid at lease inception if the car is removed and registered in a different state?

No. Sales tax on a vehicle lease due at the time of sale is based on the lessee’s place of residence. *See* Tax Law §§ 1117 and 1214. Petitioner was a resident of New York State at the beginning of the lease. If a leased vehicle on which New York State and local sales tax has been paid is later moved out of the state, the lessee is not entitled to a refund because the entire amount of tax was due at the inception of the lease. *See Matter of Miehle*, Tax Appeals Tribunal, August 24, 2000; *Matter of Moerdler*, Tax Appeals Tribunal, April 26, 2001. There is no statutory or regulatory provision that allows a refund if the vehicle is later removed from the State. *See, Matter of Torquato*, Tax Appeals Tribunal, October 12, 2000.

Issue 4 - Has the sales tax been paid over to New York State on Petitioner’s lease?

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. *See* Tax Law §§ 1111(i), 1132, and 1137. Due to the secrecy provisions of the Tax Law, the Department cannot disclose the dealer’s sales tax return information, including whether the dealer has remitted the sales tax on Petitioner’s lease to the Department. *See* Tax Law § 1146.

DATED: December 11, 2015

/S/

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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.