

**STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE**

ADVISORY OPINION

The Department of Taxation and Finance (“the Department”) received a Petition for an Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether sales tax is due where a New York customer assumes an existing long-term lease of a motor vehicle from another New York customer and, if so, how such amounts are calculated and whether the number of remaining payments due under the existing lease affects the taxability.

We conclude that sales tax is due at the inception of the assumption of the lease on the total amount of the monthly payments due for the remainder of the lease, plus any down payment and acquisition fees paid by the assignee as part of the lease assumption. Further, the duration of lease term when it was first entered into by the original lessee dictates whether it is a long-term lease, not the number of months remaining in the lease term when the lease is assumed.

Facts

Petitioner states that, in some instances, a New York customer who entered into a long-term motor vehicle lease agreement with Petitioner seeks to assign that lease to another person. In these situations, the assignee does not execute a new lease agreement with the Petitioner, and instead assumes responsibility for paying the remaining lease payments due under the long-term lease agreement. The assignee is required to register the vehicle in his or her name, but title to the vehicle remains with Petitioner. At the time the assignment takes place, the number of payments/months left on the lease in certain circumstances could be less than one year or 12 monthly payments. The assignee usually is charged a one-time assumption fee and is responsible for the remaining monthly lease payments. The entire amount of sales tax due on the original lease was paid by the original lessee at the outset of the long-term lease and/or was financed as part of the lease agreement.

Analysis

New York State and local sales tax is imposed on receipts from the retail sale of tangible personal property. *See* Tax Law § 1105. Tax Law § 1101(b)(5) explicitly defines “sale” to include the transfer of title or possession or both, including a rental or lease, in any manner or by any means whatsoever for a consideration, or any agreement therefor. With respect to any lease of a motor vehicle for a term of 12 months or more (“long-term lease”), sales tax is due on all receipts due or consideration given or contracted to be given for a leased vehicle for the entire period of the lease on the date the first lease payment is due, or at the time the vehicle is registered with the Commissioner of Motor Vehicles, whichever is earlier. *See* Tax Law § 1111(i)(A).

When an existing long-term lease agreement is assumed by an assignee, the transfer of possession of the vehicle, in consideration for the assumption by the assignee of the remaining lease payments, creates a new, separate and distinct taxable sale. *See* Tax Law § 1101(b)(5); 20 NYCRR § 525.2. Accordingly, sales tax is due upon the assumption of the lease on the entire amount of

remaining payments due under the lease, plus any down payment and acquisition fees paid by the assignee as part of the lease assumption, unless an exception applies. The applicable rate of tax is the combined State and local tax rate in effect in the locality of the assignee's residence. *See* Tax Law §§ 1117 and 1214.

While the Petitioner points out that the entire amount of sales tax due on the original long-term lease was paid by the assignor at the outset of the lease term and/or financed as part of the lease agreement, that has no effect on the tax owed by the assignee. *See* Tax Law § 1111 (i) (A) and 20 NYCRR § 527.15(a). Because the assignment of the lease is a separate sale, the assignee of a long-term lease must pay tax on the entire balance of remaining lease payments, plus any additional amounts charged by the lessor. The assignee is not entitled to any credit for tax paid by another person on a separate sale.

The Sales and Use Tax Regulations specifically provide that no refund or credit shall be allowed for tax paid on a long-term lease based upon the fact that receipts are not actually paid, as in the case of early termination of a lease. A party assuming a lease is not entitled to credit for the tax paid by the original lessor. *See* 20 NYCRR § 527.15(e); *Matter of Michael Greenfield*, Tax Appeals Tribunal, June 6, 2019; *Matter of Moerdler*, Tax Appeals Tribunal, April 26, 2001; *Matter of Miehle*, Tax Appeals Tribunal, August 24, 2000.

Petitioner also asks if an assumed lease would be considered a long-term lease if the remaining lease term is less than 12 months. If the original lease was for a term of 12 months or more, the assumed lease is a long-term lease subject to the provisions of Tax Law § 1111 (i), and tax is due on all receipts or consideration given for the assigned lease at the earlier of the due date of the first payment or the date the vehicle is registered, regardless of the term remaining on the lease. *See* 20 NYCRR § 527.15.

DATED: October 20, 2020

/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.