

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-83(25)S
Sales Tax
June 17, 1983

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S821008A

On October 8, 1982 a Petition for Advisory Opinion was received from Auto Rental Corporation, Gold Star Blvd. @ Milbrook, Worcester, Massachusetts 01613.

The issue raised is whether certain billing adjustments occurring at the termination of a long term lease of a motor vehicle are subject to sales and use taxes.

Petitioner is in the business of leasing motor vehicles to its customers. When Petitioner leases a vehicle under an open end lease, the lease payments include amounts representing projected depreciation and maintenance expenses. Under the terms of the lease agreements, the lessees agree to pay for the actual depreciation and maintenance expenses incurred during the life of the lease. Petitioner collects from the lessee sales tax on the amount of each monthly lease payment, including amounts representing projected depreciation and maintenance costs.

If, upon termination of the lease, Petitioner sells the vehicle for less than its value after depreciation, Petitioner bills the lessee for the difference between such value and the selling price. If Petitioner sells the vehicle for more than its value after depreciation, Petitioner issues a credit or refund to the lessee for the difference between such value and the selling price.

If at the end of the lease term maintenance expenses actually incurred turn out to have exceeded the amount paid therefor by the lessee, Petitioner bills the lessee for the excess. If the actual expenses turn out to have been less than the amount paid by the lessee, Petitioner issues the lessee a credit or refund for the difference.

Section 1105(a) of the Tax Law imposes the State sales tax on the receipts from sales (including rentals) of tangible personal property. Accordingly, tax must be collected on each payment under the lease, including those portions attributable to depreciation and projected maintenance expenses. Additional charges made at the conclusion of the lease term for excess maintenance costs or depreciation are part of the sale price and are also subject to tax. Where, on the other hand, Petitioner makes a refund or gives a credit under the circumstances described above, the customer is entitled to a refund of the sales tax on such amounts. Petitioner may make the refund to the customer and claim a credit on its sales tax return, or, where the sales tax has been remitted to the State Tax Commission and Petitioner does not make a direct refund to the customer, the customer may file a claim for refund of taxes paid.

DATED: May 27, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau