

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

TSB-A-91 (33)S  
Sales Tax  
April 15, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S901113A

On November 13, 1990, a Petition for Advisory Opinion was received from Alamo Rent A Car, Inc., PO Box 22776, Fort Lauderdale, FL 33335.

Petitioner, Alamo Rent A Car, is planning to conduct business in New York. Petitioner's principal business will consist of renting automobiles to customers on a short-term basis. Petitioner sets forth twenty-five questions concerning the application of the New York State and local sales and use tax to its activities.

The following are the questions presented by Petitioner concerning its activities and the appropriate answers:

1. Q: Are the receipts from time charges, which are based on the number of days a car was rented, subject to sales tax?  
  
A: The income derived from the rental or lease of automobiles based on the number of days and an exceeded mileage limitation is subject to State and local sales and use tax pursuant to Sections 1101(b)(5) and 1105 of the Tax Law since it constitutes the "sale" of tangible personal property. Also, Section 1160 of the Tax Law imposes a special tax on passenger car rentals at a rate of 5% of the rental receipts and on all taxable charges incidental to the rental which are mentioned in succeeding answers.
2. Q: Are intercity fee drop charges for allowing lessees to drop off cars in less desirable cities subject to sales tax?  
  
A: Intercity fee drop charges are incidental to the rental or lease of motor vehicles and are, therefore, subject to State and local sales and use tax.
3. Q: Are charges for allowing the lessee to upgrade automobiles to a more luxurious type of car subject to sales tax?  
  
A: Any charge for allowing a lessee to upgrade automobiles to a more luxurious type of car is incidental to the rental or lease of the motor vehicle and is subject to State and local sales and use tax.
4. Q: Are lessee fuel charges whether elected or required to be paid at the initial rental or upon return of the automobile subject to sales tax?

- A: Any charges for fuel are incidental to the lease or rental of the motor vehicle and thus, subject to State and local sales and use tax.
5. Q: Are charges for personal accident insurance paid by the lessee to insure against liability for injuries incurred by lessee or his passengers subject to sales tax?
- A: Charges for insurance are not subject to State and local sales and use tax, provided such charges are separately stated on the bill presented to the lessee.
6. Q: Are fees paid for a collision damage waiver subject to sales tax?
- A: Fees paid for a collision damage waiver are not subject to State and local sales and use tax since the waiver is considered to be, in substance, a form of insurance, provided the charges for the waiver are separately stated on the bill presented to the lessee.
7. Q: Are damage reimbursements paid by lessee to Petitioner to cover the cost of repairs to damaged automobiles subject to sales tax?
- A: Payments by a lessee for the cost of repairs to a damaged vehicle are not subject to State and local sales and use tax as the repair charges are purchased by the lessor for resale.
8. Q: Are discounts given at the time of rental or subsequently remitted to lessees in conjunction with promotional activities and for various other reasons which reduce revenue subject to sales tax?
- A: Pursuant to Section 526.5 of the Sales and Use Tax Regulations, discounts which represent a reduction in price, such as a trade discount, volume discount or cash and carry discount are deductible in computing taxable receipts.
9. Q: Will full or partial credits or refunds which are given to customers which are not satisfied with the Petitioner's service, reduce the revenue subject to sales tax?
- A: Refunds or credits granted to customers dissatisfied with the Petitioner's service will reduce the sales tax by the corresponding amount of tax computed on that portion of the reduced charge, credit or refund.
10. Q: Will credits or reimbursements to customers for incidental repair charges incurred while renting the auto reduce the revenue subject to sales tax?
- A: No.

11. Q: Will incentives offered to customers in the form of reduction of rental rates, partial cash refunds or something else of monetary value (e.g., a plane ticket) to return autos to different rental stations reduce the revenue subject to sales tax?
- A: A reduction of the rental rate or a cash refund would have a different treatment than an inducement in the form of something of monetary value. The reduction of the rental rate or a cash refund from the lessor would reduce the applicable sales tax due on the rental since the receipts would be reduced. The giving of something of monetary value as an incentive to return an auto to a certain rental station is a gift to the customer and the tax would be based on the actual rental charge since the receipts would not be reduced. Petitioner would be required to pay sales tax on its purchase of the promotional items.
12. Q: Will bad debt expenses, written off for federal income tax purposes, reduce revenues subject to sales tax?
- A: Section 534.7 of the Sales and Use Tax Regulations provides a credit or refund of sales tax paid by a vendor on worthless accounts receivable written off for federal income tax purposes.
13. Q: Is gasoline purchased by Petitioner for use in rental cars subject to sales tax?
- A: The purchase of gasoline for this purpose is a purchase for resale. However, Form ST-120, Resale Certificate, cannot be used for such purchases. The sales tax must be prepaid and recovered as a credit on Schedule FR, Report of Sales and Use Tax on Motor Fuel and Diesel Motor Fuel.
14. Q: Is gasoline purchased by Petitioner for use in employee automobiles subject to sales tax?
- A: The purchase of gasoline by Petitioner for use in employee automobiles is taxable as the use of tangible personal property.
15. Q: Are charges for repairs, maintenance parts, and labor for use in rental vehicles and in support vehicles subject to sales tax?
- A: Charges for vehicle repairs, maintenance parts, and labor are not taxable, as the repair and/or maintenance (including labor) of tangible personal property held exclusively for use in performing a rental service are considered purchases for resale. Such charges for the support vehicles are fully subject to sales tax.

16. Q: Will the use of automobiles from the rental fleet by employees to carry out business activities of the company be subject to use tax?
- A: Use of autos by employees to carry on business activities is the use of tangible personal property and is taxable. Therefore, if the autos were purchased exempt as a sale for resale, the vendor must pay the use tax on the motor vehicles used in this manner. The company, in lieu of paying the use tax on the purchase price, may pay tax based on a depreciated price at the rate of 2 percent per month or part thereof provided that the Petitioner is a registered motor vehicle dealer.
17. Q: Will the use of automobiles from the rental fleet by employees for a combination of business and personal use be subject to use tax?
- A: The use of automobiles by employees for a combination of business and personal use is also subject to use tax for the same reason given in number 16.
18. Q: Will the use of automobiles by customers provided on a complimentary rental (for promotional purposes, etc.) be subject to sales or use tax?
- A: The complimentary rental of automobiles to customers for promotion purposes is exempt from sales tax since no retail sale to the customer has occurred. However, the use of the vehicles by the Petitioner to promote business is subject to use tax at the same rate of tax that would have been charged by the Petitioner in a rental of the vehicle, with allowance for depreciation at the rate of 2 percent per month or part thereof provided that the Petitioner is a registered motor vehicle dealer.
19. Q: Are purchases of promotional gifts to be given to customers as an inducement to rent automobiles exempt from sales and use tax? Is a discount against taxable sales allowed when the gifts are given to customers?
- A: The purchase of items for promotional purposes are subject to sales and use tax since the items are not being purchased for resale. Also, giving something of monetary value as an incentive for renting automobiles does not reduce the rental rate for which the sales tax was applied. Therefore, there is no discount afforded against taxable sales.
20. Q: Will the rental of real property for commercial use be subject to sales tax?
- A: The rental of real property for commercial use or otherwise is exempt from sales tax.

21. Q: Are vehicles (other than automobiles) that are purchased to transport customers free of charge from the airport to the rental agency subject to sales tax?
- A: Petitioner's purchase and use of vehicles, other than automobiles, that are offered free of charge to the public to transport customers from the airport to the rental agency are subject to sales and use tax.
22. Q: Are the purchase of rental vehicles for use in the rental business subject to sales tax?
- A: The purchase of automobiles for this purpose would be considered purchased for resale and exempt from sales tax.
23. Q: Is Petitioner liable for use tax on the use of vehicles loaned free of charge by car dealers as an incentive for a volume purchase?
- A: Since there is no sale to Petitioner of these vehicles, there is no sales or use tax due from the car dealer on the free loan provided the loan is not conditioned upon a certain volume of sales. However, Petitioner would owe a use tax at the same rate of tax that would have been charged by the Petitioner in a rental of the vehicle.
24. Q: What are the sales and use tax laws relating to sales of vehicles to wholesalers and retailers?
- A: Purchases for resale by in-state customers are exempt from sales tax upon the purchaser's issuance of Form ST-120, Resale Certificate. Both the seller and purchaser must be registered as New York State sales tax vendors.
- Purchases for resale by out-of-state customers are exempt from sales tax upon the purchaser's issuance of Form ST-174, Certificate For Purchase of Motor Vehicle by Non-resident of New York State or Non-resident of Local Taxing Jurisdiction.
25. Q: Will a park and ride service whereby customers park their privately owned vehicles on Petitioner's property and are transported to the airport be subject to sales tax?
- A: If there is no charge for the service, there is no taxable service rendered. However, if Petitioner charges a fee and separately states a charge for parking and a charge for transporting the customers, the charge for parking is subject to sales tax, but the charge for transportation is exempt. If there is one charge

TSB-A-91 (33)S  
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for both services, the entire charge is subject to sales tax, since taxable and exempt tangible personal property and/or services when sold as a single unit are taxable.

DATED: April 15, 1991

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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