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

TSB-A-95 (31)S
Sales Tax
August 8, 1995

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. S950215A

On February 15, 1995, a Petition for Advisory Opinion was received from New York State Automobile Dealers, Inc., 37 Elk Street, P.O. Box 7347, Albany, New York 12224-0347.

The issue raised by Petitioner, New York State Automobile Dealers, Inc., is whether the customer in the automobile leases described in the following hypothetical situations is entitled to a credit for the value of its trade-in when calculating the receipts subject to sales and use taxes.

Situation 1: A motor vehicle dealer in New York State (the "Dealer") leases a motor vehicle to a Customer for thirty-six months utilizing lease forms provided by a leasing company (the "Lease Company"). The lease documentation names the Lease Company as the lessor and the Customer as the lessee.

As part of the transaction, the Customer "trades in" the Customer's used vehicle and receives a reduction in the capital cost used in computing the lease payment under the lease. Title to the "trade-in" is transferred from the Customer to the dealer. The lease is between the Lease Company and Customer. Title to
the leased vehicle is transferred from the Dealer to the Lease Company.

After completion of the transaction, periodic lease payments are made by the Customer to the Lease Company. The Dealer in this transaction has been appointed as the Lease Company's agent for executing the lease documents.

Situation 2: Assume the same facts as Situation 1 except that the Dealer has, in addition, been appointed the Lease Company's agent for accepting the trade-in as well as for executing the lease documents.

Situation 3: Assume the same facts as Situation 2. However, also assume that the lease transaction described in Situation 2 took place in 1992 and that the lease (the "Original Lease") contained a purchase option in favor of the Customer in the amount of $10,000. Further assume that in 1995, the Original Lease is about to expire and that the fair market value of the automobile involved in the Original Lease for trade-in purposes is $12,000, i.e., there is an "equity" in the Original Lease in favor of the Customer in the amount of $2,000.

The Customer now wishes to "trade-in" this equity of $2,000 and to lease a 1995 vehicle from the same Dealer acting as an agent for the Lease Company for the purpose of both executing the lease documents and accepting trade-ins. The Dealer reduces the agreed upon cost of the 1995 vehicle to the Lease Company by the $2,000 value inherent in the Customer's purchase option.

Situation 4: The Dealer leases a vehicle to the Customer on forms provided by the Leasing Company. Under the terms of the forms, the Lessor is the Dealer. The Customer "trades-in" his or her vehicle to the Dealer and the capital cost of the leased vehicle in the lease is reduced by the value allocated to the trade-in.

At the time of execution of the lease between the Dealer and the Customer, the leased vehicle is owned by the Dealer and the trade-in is transferred to the Dealer.

Subsequent to the completion of that transaction, the Dealer assigns the lease to the Lease Company and receives the agreed upon value of the new vehicle leased to the Customer (less the value of the trade-in) which has been used in the computation of the lease payment. Periodic lease payments are made to the Lease Company.

Section 1101(b)(3) of the Tax Law defines receipts as "[t]he 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 its vendor to the purchaser . . . but excluding any credit for tangible personal property accepted in part payment and intended for resale . . . ."

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

> (i) Notwithstanding any contrary provisions of this article or other law, with respect to any lease for a term of one year or more of (1) 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 the lease, option or similar provision, or combination of term, 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 the first payment under the lease, option, 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, as follows:

> (f) 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.

Example 1: A motor vehicle dealer allows a customer $850.00 for a used automobile, accepted in part payment against the sale price of $3200.00 for a new automobile. The used automobile is for resale. The customer is billed as follows:

New automobile $3200.00
Trade-in 850.00
Due $2350.00

Receipt subject to tax is $2350.00.

Section 527.15(c)(5) of the Sales and Use Tax Regulations provides that "[W]here 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."

In Marine Midland Automotive Financial Corp., Adv Op Comm T&F, June 8, 1988, TSB-A-88(32)S the Commissioner advised that where a customer trades a vehicle with a vendor from whom the customer is not leasing a new vehicle, the transaction is not a trade-in, but, instead clearly involves two separate transactions. Accordingly, the transfer of the vehicle from the customer to the automobile dealer is not subject to tax (assuming that the dealer acquires such vehicle for purposes of resale). However, the full amount of the lease price of the vehicle (i.e., all payments under the lease plus the value of the vehicle transferred to the automobile dealer) is subject to tax. Thus, the value of the vehicle transferred to the automobile dealer may not be used to reduce the full lease amount subject to tax.

In Situation 1, the dealer has been appointed as the Lease Company's agent for the purpose of executing the lease document(s). The dealer has not been appointed as the Lease Company's agent for the purpose of accepting trade-ins. Pursuant to Marine Midland Automotive Financial Corp., supra, where a customer does not trade-in a vehicle with the same vendor from whom the customer is leasing the new vehicle, the transaction involves two separate transactions and the value of the vehicle transferred may not be used to reduce the lease payments subject to sales tax.

Accordingly, pursuant to Section 1101(b)(3) of the Tax Law and Marine Midland Automotive Financial Corp., supra, the full amount of the lease price of the vehicle, without regard to any trade-in allowance, is subject to sales tax.

It is noted that pursuant to Section 1111(i) of the Tax Law, sales tax must be collected as of the date of the first payment due under the lease, option or similar provision, or combination of them, or as of the date of registration of such vehicle with the commissioner of motor vehicles, whichever is earlier.

With respect to Situation 2, the Dealer has been appointed as the Lease Company's agent for the purpose of accepting trade-ins as well as for executing the lease document(s). Accordingly, assuming the trade-in is being accepted by the dealer as agent for the Lease Company with the intent of resale, 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 value of such trade-in may be excluded when arriving at the receipts subject to sales tax.

Pursuant to Section 1111(i) of the Tax Law sales tax must be collected as of the date of first payment under the lease, option or similar provision, or combination of them, or as of the date of registration of such vehicle with the commissioner of motor vehicles, whichever is earlier.

Concerning Situation 3, the automobile involved in the Original Lease in 1992, has a trade-in value in 1995 of $12,000. Accordingly, assuming the trade-in is being accepted by the Dealer as agent for the Lease Company with the intent of resale, and assuming that the purchase option on the 1992 vehicles is exercised, 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 value of such trade-in ($12,000) may be excluded when arriving at the receipts subject to sales tax.

Pursuant to Section 1111(i) of the Tax Law sales tax must be collected as of the date of first payment under the lease, option or similar provision, or combination of them, or as of the date of registration of such vehicle with the commissioner of motor vehicles, whichever is earlier.

As for Situation 4, the Dealer leases new vehicles to customers and accepts their vehicles as trade-in as part payment toward the lease of the new vehicle. Accordingly, assuming the trade-in is being accepted by the Dealer with the intent of resale, 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 value of such trade-in may be excluded when arriving at the receipts subject to sales tax.

It is noted that pursuant to Section 1111(i) of the Tax Law sales tax must be collected as of the date of first payment under the lease, option or similar provision, or combination of them, or as of the date of registration of such vehicle with the commissioner of motor vehicles, whichever is earlier.

It is further noted that the customer will owe sales tax on the option purchase price when he exercises the option.

DATED: August 8, 1995

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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