

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

TSB-A-95 (37)S  
Sales Tax  
September 15, 1995

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S950321A

On March 21, 1995, a Petition for Advisory Opinion was received from General Electric Capital Auto Lease, Inc., 600 Hart Road, Barrington, Illinois 60010.

The issue raised by Petitioner, General Electric Capital Auto Lease, Inc., is whether it is responsible for collecting sales tax on leases of vehicles, where it purchases the leases from the dealerships.

Petitioner's leases originate at various dealerships located throughout New York State. None of the dealerships are affiliated with Petitioner. All negotiations between prospective lessees and dealer take place at the dealership. All lease documents are initiated and executed at the dealership (dealership signing as the initial lessor), and any required initial cash outlays are tendered there as well, taxes included. Completed lease documents are submitted to Petitioner's regional office for approval and once approved the lease is automatically assigned to Petitioner, and the vehicle is then purchased by Petitioner from the dealership.

The pertinent section of the lease agreement follows:

The authorized signature of the lessor below has the effect of:

1. Accepting the terms and conditions of this Lease Agreement, and
2. Assigning to General Electric Capital Auto Lease, Inc. (GECAL) all right, title and interest in and to the Vehicle and this Lease Agreement, including all amounts to become due under it, subject to the provisions of that certain Lease Plan Agreement between the lessor and GECAL.

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 provisions, 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 provisions, or

combination of them, or as of the date of registration of such property with the commissioner of motor vehicle, whichever is earlier.

Section 526.7(a)(2) of the Sales and Use Tax Regulations provide that, "[A]mong the transactions included in the word sale, selling or purchase are exchanges, barter, rentals, leases or licenses to use or consume tangible personal property".

Section 532.1(a)(1) of the Sales and Use Tax Regulations further provides that "[E]very person required to collect the tax shall collect the tax from the customer when collecting the price, amusement charge, or rent to which it applies".

Section 527.15(c)(1)(i) of the Sales and Use Tax Regulation provides in part:

With respect to the lease of a motor vehicle, vessel or noncommercial air-craft for a period of one year or more, all receipts due or consideration given or contracted to be given for such property under, and for the entire period of, the lease, renewal option or combination of them, (except as provided in paragraph [2] of this subdivision) are deemed to have been paid or given and are subject to tax, and any tax shall be collected, at the inception of the lease. Renewal options are included in the computation of tax, whether or not they are exercised or are for a period of one year or more, individually or cumulatively. (For any lease entered into prior to June 1, 1992, where a lease itself was for a period of one year or more, any option to renew a lease or similar contractual provision was required to have been for a period of one year or more before it was subject to the provisions of section 1111 [i] of the Tax Law).

In the instant case the lessor of the motor vehicles, the motor vehicle dealership, is the person making a sale of tangible personal property which is subject to sales tax and is required to collect such tax at the time the lease is consummated. The subsequent assignment of the lease by the dealership to Petitioner does not make the Petitioner liable for the collection of sales tax from the lessee in accordance with sections 526.7(a)(2) and 532.1(a)(1) of the Sales and Use Tax Regulations.

It is noted that the Petitioner would be responsible for collecting any sales tax that is due on any extensions of the lease and on lease purchase options.

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It is further noted that this opinion only applies to leases taxable under Section 1111(i) of the Tax Law. In the case of short term leases of less than one year or leases of motor vehicles which are not defined in Section 125 of the Vehicle and Traffic law or which have a gross weight in excess of 10,000 pounds, Petitioner would be responsible to collect sales tax on each rental payment.

DATED: September 15, 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.