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

TSB-A-96 (19)S
Sales Tax
March 22, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO.S950508A

On May 8, 1995 a Petition for Advisory Opinion was received from Mercedes-Benz Credit Corporation, 201Merritt 7, Suite 700, Norwalk, Connecticut 06851.

The issues raised by Petitioner, Mercedes-Benz Credit Corporation, regarding the computation and payment of New York sales tax on long term automobile leases and based on the facts stated below, are whether:

1) the dealer, not the leasing company, is considered to be the original lessor;

2) the dealer, not the leasing company, is liable and responsible for remitting New York sales tax; and

3) a capitalized cost reduction representing the equity in a customer's traded vehicle is subject to New York sales tax.

Petitioner makes the following submission of facts.

Petitioner is a Delaware corporation with headquarters in Connecticut. Petitioner is not a dealer. Petitioner is a leasing company which is in the business of leasing Mercedes-Benz automobiles to customers throughout the United States. Petitioner has regional offices in other states but does not have an office in New York. Petitioner does business in the following manner.

1) Petitioner offers long-term lease programs through local independent automobile dealerships. All the lease programs are for terms in excess of 12 months. Petitioner's leases provide the lease customer (the lessee) with an option to purchase the automobile at the end of the lease for the residual value. The residual value represents an estimate of the expected fair market value of the vehicle at lease maturity.

(2) The dealership negotiates the lease of a Mercedes-Benz automobile with the customer (lessee) using Petitioner's program rates.

(3) The dealer completes and executes a standard Petitioner lease agreement with the lessee. Although the lease agreement is preprinted with Petitioner's name, the original lessor indicated on the agreement is the dealer. At the time the lease is executed, the dealer holds title to the leased vehicle. It is understood that upon execution of the lease agreement, Petitioner will purchase the leased vehicle from the dealer and the lease agreement will immediately be assigned to Petitioner as the lessor. Petitioner has the right to refuse assignment of any lease not adhering to Petitioner's standards.

In the normal course of business, dealers will accept the lessee's personally owned vehicle as a trade-in. The equity from the trade-in (market value less any unpaid loan balance) will be applied to the lease agreement as a capitalized cost reduction. A capitalized cost reduction is analogous to an advance payment and will reduce the amount of each future periodic lease payment. Title to, and possession of, a trade-in vehicle will be passed to the dealer, who will resell the vehicle.

(4) Petitioner gives the dealer the purchase price of the vehicle less any funds collected by the dealer from the lessee, including the first lease payment, acquisition fees and capitalized cost reductions. Petitioner records as income all payments including the first lease payment, paid acquisition fees and capitalized reductions. Petitioner capitalizes and depreciates the full purchase price of the vehicle.

(5) All future lease payments are made directly to Petitioner by the lessee.

Section l101(b)(3) of the Tax Law defines receipts as follows:

> [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 the vendor to the purchaser. . . but excluding any credit for tangible personal property accepted in part payment and intended for resale ....

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

> (A) Notwithstanding any contrary provisions of this article or other law, with respect to any lease for a term of one year or more of 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 such lease, option to renew or similar provision, or combination of them, 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 first payment under such lease, option to renew 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. (Emphasis supplied)

Section 527.15(a) of the Sales and Use Tax Regulations provides as follows:

> Section 1111(i) of the Tax Law provides special rules for the payment of sales and use tax on certain leases of motor vehicles, vessels and noncommercial aircraft. Rather than the tax being due upon each periodic lease payment, the Tax Law provides that with respect to the leases described in this section the tax is due at the inception of the lease on the total amount of the lease payments for the entire term of the lease.

Section 527.15(c)(5) of the Sales and Use Tax Regulations provides as follows:

> Where 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. (Emphasis added)

In this case, dealers enter into lease agreements with customers for the lease of motor vehicles. These agreements state that the dealer is the lessor and the customer is the lessee. The dealer negotiates and accepts in part payment of the purchase price (i.e., the lease consideration) a customer trade-in with the intent of reselling the trade-in. The dealer accepts the first lease payment from the customer. The facts presented by Petitioner do not indicate that dealers act as the agents of Petitioner in these lease transactions. Based upon the factual presentation, the dealer is considered the original lessor, who will assign the lease to Petitioner after the lease agreement is executed. Upon completion of the lease documentation, Petitioner purchases the lease and vehicle from the dealer. Accordingly, the dealer is responsible for collecting and remitting the New York sales tax due on the lease pursuant to section 1111(i) of the Tax Law.

Pursuant to section l101(b)(3) of Tax Law and sections 526.5(f) and 527.15(c)(5) of the Sales and Use Tax Regulations, the "capitalized cost reduction" is not subject to the New York sales tax, since the dealer accepts the lessee's vehicle as a trade-in with the intent of reselling the vehicle and applies the amount of the "capitalized cost reduction" against the consideration due under the lease for the vehicle.

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

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.

/s/

DATED: March 22, 1996

DORIS S. BAUMAN
Director
Technical Services Bureau

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