

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

TSB-A-96 (45)S
Sales Tax
July 11, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S950526A

On May 26, 1995, a Petition for Advisory Opinion was received from the 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 rental payments received pursuant to an extension of a long term lease (over one year) of a leased passenger vehicle are subject to the 5% tax on passenger car rentals imposed by Section 1160 of the Tax Law.

Petitioner submitted the following hypothetical situation. Assume that a three year motor vehicle lease of a passenger vehicle is about to expire and that, because of the unavailability of a new replacement vehicle, the lease is extended for three months. Further assume that the original lease of three years was subject to the provisions of §1111(i)(A) of the Tax Law and that the sales tax due on the 36 monthly payments provided for in the original lease was paid at the inception of that lease as required by the Tax Law.

The consumer-lessee wishes to lease a new vehicle but the new vehicle is not available for delivery. The lessor and lessee agree to extend the original three year lease before it expires so that the consumer-lessee may continue to use the original leased vehicle until the new vehicle is received.

Applicable Law and Regulations

Section 1111(i) of the Tax Law provides that:

(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 (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, (2) a vessel, as defined in section twenty-two hundred fifty of such law (including any inboard or outboard motor and any trailer, as defined in section one hundred fifty-six of such law, leased in conjunction with such a vessel) and (3) noncommercial aircraft having a seating capacity of less than twenty passengers and a maximum payload capacity of less than six thousand pounds, 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. Notwithstanding any inconsistent provisions of subdivision

(b) of this section or of section eleven hundred seventeen of this article or of other law, for purposes of such a lease, option to renew or similar provision originally entered into outside this state, by a lessee (1) who was a resident of this state, and leased such property for use outside the state and who subsequently brings such property into this state for use here or (2) who was a nonresident and subsequently becomes a resident and brings the property into this state for use here, any remaining receipts due or consideration to be given after such lessee brings such property into this state shall be subject to tax as if the lessee had entered into or exercised such lease, option to renew or similar provision, or combination thereof, for the first time in this state and the relevant provisions of sections eleven hundred ten concerning imposition and computation of tax, eleven hundred eighteen concerning exemption from use tax for tax paid to another jurisdiction, eleven hundred thirty-two concerning presumption of taxability and conditions for registration and eleven hundred thirty-nine concerning refunds, of this article, shall be applicable to any sales or compensating use tax paid by the lessee before the lessee brought the property into this state, except to the extent that any such provision is inconsistent with a provision of this subdivision. For purposes of this subdivision, (1) a lease for a term of one year or more shall include any lease for a shorter term which includes an option to renew or other like provision (or more than one of such option or other provision) where the cumulative period that the lease, with or without such option or provision, may be in effect upon exercise of such option or provision is one year or more and (2) receipts due and consideration given or contracted to be given under any such lease or other provision for excess mileage charges shall be subject to tax as and when paid or due.

* * *

(C) Any receipts due or consideration given or contracted to be given under an option to renew a lease of a motor vehicle described in this subdivision or similar contractual provision, or combination of them, exercised as part of any such lease between the same lessor and the same lessee with respect to the same motor vehicle or vehicles, where such lease or any option to renew such a lease or any other similar contractual provision was subject to tax in accordance with the provisions of this subdivision, shall not be subject to the tax imposed under the provisions of article twenty-eight-A of this chapter.

Section 1160(a) of the Tax Law provides that:

(1) On and after June first, nineteen hundred ninety, in addition to any tax imposed under any other article of this chapter, there is hereby imposed and there shall be paid a tax of five percent upon the receipts from every rental

of a passenger car which is a retail sale of such passenger car.

(2) Except to the extent that a passenger car rental described in paragraph one of this subdivision has already been or will be subject to the tax imposed under such paragraph and except as otherwise exempted under this article, there is hereby imposed on every person and there shall be paid a use tax for the use within this state on and after June first, nineteen hundred ninety of any passenger car rented by the user, which is a purchase at retail of such passenger car, but not including any lease of a passenger car to which subdivision (i) of section eleven hundred eleven of this chapter applies. For purposes of this paragraph, the tax shall be at the rate of five percent of the consideration given or contracted to be given for such property, or for the use of such property, including any charges for shipping or delivery as described in paragraph three of subdivision (b) of section eleven hundred one of this chapter, but excluding any credit for tangible personal property accepted in part payment and intended for resale.

Section 527.15(b) of the Sales Tax Regulations provides the following definitions:

(1) A lease for a term of one year or more includes:

(i) any lease that covers a period of one year or more; and

(ii) any lease for a period of less than one year where the lease includes one or more options to renew or any similar contractual provisions or combination thereof that would, if exercised, make the cumulative period of the lease one year or more.

* * *

(2) *Renewal option* includes any option to renew a lease as well as any contractual provision that, while not referred to as a renewal option, would obtain the same result.

Section 527.15(g) of the Sales Tax Regulations further provides that:

Miscellaneous. Any receipts due or consideration given or contracted to be given under an option to renew a lease of a motor vehicle described in this section or a similar contractual provision or combination of them, exercised as part of any such lease between the same lessor and lessee with respect to the same motor vehicle or vehicles, where such lease or any option to renew such lease or any similar contractual provision is subject to tax in accordance with this section and section 1111(i) of the Tax Law shall not be subject to the Special Tax on Passenger Car Rentals imposed pursuant to the provisions of article 28-A of the Tax Law.

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When the lessor and lessee in the hypothetical situation agree to a lease extension prior to the expiration of the existing lease, the lease extension is subject to the provisions of section 1111(i)(C) and section 527.15 of the Sales and Use Tax Regulations. The tax due on the lease extension should be collected at the date when the agreement to extend the lease is entered into and is based upon the full length of the extension. In the hypothetical situation inquired about, since the extension is for a stated period of three months, tax on the lease payments for the three months should be collected at the time that the parties agree to the extension. The lease payments during such an extension are not subject to the additional 5% tax imposed by Section 1160 of Article 28-A of the Tax Law.

However, if the lessor and lessee in the hypothetical situation agree to an additional three month rental period after the three year lease has expired, the rental for the additional three months is considered to be a new lease for a term of less than one year. The payments under the new lease would be subject to the five percent additional tax imposed by Section 1160 of the Tax Law. In this case, the additional rental period would not be subject to the provisions of Section 1111(i) of the Tax Law. The lessor would be required to collect the sales or compensating use tax on each monthly payment from the lessee, together with the additional five percent tax, at the time that each monthly payment is made.

DATED: July 11, 1996

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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