

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

TSB-A-91 (36)S
Sales Tax
April 29, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S901221A

On December 21, 1990 a Petition for Advisory Opinion was received from Norstar Auto Lease Inc., 1450 Western Avenue, Albany, New York 12203.

The issue raised by Petitioner, Norstar Auto Leases Inc., is whether sales tax should be collected on the unpaid balance of an automobile lease when the leased vehicle is stolen and lost or totaled in an accident; and if so, should the insurance company's settlement payment include sales tax.

Petitioner leases automobiles on a long-term basis of 24 to 60 months. The lease may or may not require the lessee to purchase the auto at the end of the lease term. Title remains in the name of Petitioner. Sales tax is paid on the monthly rental payments.

If an insurance claim is made, Petitioner quotes the insurance company the amount necessary to give up title to the automobile. The insurance company pays Petitioner all or part of the quoted buyout and the lessee is billed for any shortage. The insurance company then takes title to the automobile. Insurance companies tend to exclude sales tax from the settlement amount paid to the insured.

Section 1101(b)(5) of the Tax Law defines sale as "Any transfer of title or possession or both, . . . rental or lease. . . for a consideration. . . ."

Sales tax is not imposed upon the receipts from the proceeds of an insurance claim, nor is the tax imposed on "turn-in damage" or charges imposed on a lessee for collision damages. (See: Olin Rent-A-Car of New York, Inc. Dec St Tx Comm, April 30, 1976, TSB-H-86(16)S; Kincar Leasing Corp. Dec St Tx Comm March 29, 1978, TSB-H-78(39)S). Therefore Petitioner is not required to collect sales tax from the lessee under the circumstances described.

However, it should be noted that Section 1111 of the Tax Law, amended effective June 1, 1990, states in part, as follows:

(c)(1) 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 for a

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period of one year or more or a similar contractual provision, the exercise of which would extend the term of such a lease 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, option 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 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. (Emphasis supplied)

The above provision does not apply to any lease in existence prior to the effective date of the amendment.

Sections 1119 and 1139 of the Tax Law describes situations and transactions in which a refund or credit of sales tax is applicable. There are no provisions in said sections for a refund of sales tax that was properly paid on an automobile lease for one year or more even though the leased property was subsequently lost, stolen or destroyed.

Therefore the lessee of an automobile from Petitioner cannot claim a credit or refund of sales tax paid on a lease entered into on or after June 1, 1990 even though the car is subsequently stolen, lost or totaled and the lessor is reimbursed by the insurance company for all or a part of the value of the automobile. However, no sales tax would be due on the amount representing the difference between the value of the automobile and the amount received from the insurance company that the lessee may be required to pay to the lessor under the terms of the lease.

Whether or not an insurer includes the sales tax originally paid on the lease in the amount of the settlement paid to the insured is determined by the terms and conditions of the applicable insurance policy. There is no provision in the Tax Law that requires the sales tax paid pursuant to Section 1111 of the Tax Law to be included in the amount of the settlement.

DATED: April 29, 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.