

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

TSB-A-91 (57)S
Sales Tax
August 20, 1991

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910523A

On May 23, 1991, a Petition for Advisory Opinion was received from Leonard R. Landis, 10 East 40th Street, New York, New York 10177.

The issue raised by Petitioner, Leonard R. Landis, is whether sales tax was payable upon making the downpayment where a lease of an automobile, with an option to purchase, for \$31,000 was executed, with a \$23,000 down payment, an \$8,000 "balloon", and twenty-four intervening monthly payments of "rent".

In May, 1987, Petitioner entered the showroom of Sport Leasing, a Mercedes dealership in Southampton, New York, and indicated he was interested in buying a white car. Petitioner was shown a demonstrator model and told that the purchase price was \$31,000. Petitioner responded that, provided it drove properly, he was prepared to buy it at that price.

Petitioner contends that the salesman stated that there would be a sales tax of approximately \$2,300 payable, but that the tax could be deferred in the following fashion: Petitioner would pay a downpayment of \$23,000 with an additional \$8,000 deferred for approximately two years, and in the interim he would pay a monthly "rental" payment of \$240 plus a sales tax thereon of approximately \$17. The 24 payments aggregating approximately \$5,000, would cover \$1,582 representing the interest on the deferred \$8,000, Petitioner's maintenance contract cost of \$1,500 and the sales tax of approximately \$2,300. Petitioner agreed and entered into a purchase order and a lease option agreement.

After Petitioner had made all payments, that is the \$23,000 payment, plus the 24 monthly payments of "rent" and the \$8,000 "balloon", Petitioner requested the title of the car. The leasing company refused to deliver the title on the ground that Petitioner had not paid the sales tax. Petitioner responded by saying that the sales tax was included in the monthly payments. The leasing company denied that it had ever had such a discussion with Petitioner. The lease documents were silent on the subject of sales tax other than the tax on the monthly charges.

The leasing company has now sued Petitioner for the sales tax.

Section 1105(a) of the Tax Law imposes sales tax on the receipts from sales (including rentals) of tangible personal property.

Section 1131 of the Tax Law states, in part, as follows:

"(1) 'Persons required to collect tax' or 'person required to collect any tax imposed by this article' shall include every vendor of tangible personal property or services;. . ."

In Auto Rental Corporation, Adv Op St Tx Comm, May 27, 1983, TSB-A-83(25)S the State Tax Commission advised that ". . .tax must be collected on each payment under the lease, including

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those portions attributable to depreciation and projected maintenance expenses. Additional charges made at the conclusion of the lease term for excess maintenance costs or depreciation are part of the sale price and are also subject to tax."

In Marine Midland Automotive Financial Corp., Adv Op Comm T&F, June 8, 1988, TSB-A-88(32)S the Commissioner of Taxation and Finance advised that ". . .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 dealer) is subject to tax. The value of the vehicle transferred to the automobile dealer may not be used to reduce the full lease amount subject to tax. Additionally, Petitioner as the lessor is responsible for collecting sales tax on the full price of the lease described herein."

Accordingly, for periods prior to June 1, 1990 pursuant to Section 1105(a) of the Tax Law, TSB-A-83(25)S and TSB-A-88(32)S sales tax is due on the full amount of the lease price of the vehicle and must be collected on each payment made under the lease. In addition, pursuant to Section 1131(1) of the Tax Law and TSB-A-88(32) the lessor/vendor is responsible for collecting sales tax on the full lease price.

The dispute between Petitioner and Sport Leasing as to whether Sport Leasing collected the sales tax from the Petitioner is a question of fact not susceptible of determination in an Advisory Opinion. An Advisory Opinion merely sets forth the applicability of pertinent statutory and regulatory provisions to "a specified set of facts." Tax Law 171, subd. twenty-fourth; 20 NYCRR 901.1(a).

It should be noted that Section 1111 of the Tax Law, amended effective June 1, 1990, applies sales tax to automobile leases executed on or after such date 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 for a 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 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. (Emphasis supplied)

DATED: August 20, 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.