

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-03(26)S
Sales Tax
June 12, 2003

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S030110A

On January 10, 2003, the Department of Taxation and Finance received a Petition for Advisory Opinion from ELRAC, Inc., 1550 Route 23 North, Wayne, New Jersey 07470.

The issue raised by Petitioner, ELRAC, Inc., is whether its separate charges for supplemental insurance and fuel in conjunction with the charges for the rental of automobiles are subject to sales tax imposed by section 1105 of the Tax Law and the special tax on passenger car rentals imposed by section 1160 of the Tax Law.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner is in the business of renting motor vehicles on a short-term basis of 30 days or less without a driver to customers in New York. In addition to the standard time and mileage rental charges Petitioner separately charges for optional items. These optional charges include:

Collision Damage Waiver (CDW)

When a renter purchases CDW, Petitioner agrees, subject to terms, conditions and limitations contained in the rental contract, to not pursue the renter for reimbursement of the costs of physical damage to the rental vehicle. There is no insurance carrier involved.

Personal Accident Insurance (PAI)

PAI provides the renter and any passengers with accidental death and accidental medical expense benefits subject to the terms, conditions and limitations contained in the rental contract and insurance policy. The renter is covered for accidents during the rental period whether or not the renter is actually in the rental vehicle. The passengers are covered only for accidents occurring while they occupy the rental vehicle. Under this option, the renter is an insured under an insurance policy with a licensed insurance carrier.

Personal Effects Coverage (PEC)

PEC is offered only in certain branches. When offered, it is sold in combination with PAI. It provides protection against risk of loss or damage to the personal effects of the renter and the renter's immediate family traveling with the renter subject to the terms, conditions and limitations contained in the rental contract and insurance policy. Loss or damage to personal effects during the rental period is covered, whether or not the personal effects are in the rental vehicle. Under this option, the renter is an insured under an insurance policy with a licensed insurance carrier.

Supplemental Liability Protection (SLP)

SLP provides the renter with liability protection against claims by a third party as a result of bodily injury and property damage arising out of the use of the rental vehicle subject to the terms, conditions and limitations contained in the rental contract and insurance policy. The liability protection provided is equal to a combined single limit per accident equal to the difference between the minimum financial responsibility set forth by New York State Law and \$1,000,000. Under this option, the renter is an insured under an insurance policy with a licensed insurance carrier.

Fuel Charge

If the rental vehicle is returned with less gas than it had when it left, a fuel charge of \$4.75 per 1/8th of a tank is charged. There is no fuel charge if the rental vehicle is returned with the same amount or more gas. The fuel charge amount is determined consistent with industry guidelines issued by the National Association of Attorneys General. The charge represents the estimated cost of the gasoline plus a markup of approximately 33% for refueling services. The amount charged fluctuates at times as the price of fuel fluctuates.

Applicable Law and Regulations

Section 1101(b)(5) of the Tax Law defines “sale, selling or purchase” as:

Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume (including, with respect to computer software, merely the right to reproduce), conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor.

Section 1105 of the Tax Law provides, in part:

Imposition of sales tax.-On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent upon:

- (a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

Section 1105(c) of the Tax Law imposes tax upon the receipts from every sale, except for resale, of certain enumerated services.

Section 1132(a)(1) of the Tax Law provides that:

TSB-A-03(26)S
Sales Tax
June 12, 2003

Every 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. If the customer is given any sales slip, invoice, receipt or other statement or memorandum of the price, amusement charge or rent paid or payable, the tax shall be stated, charged and shown separately on the first of such documents given to him. The tax shall be paid to the person required to collect it as trustee for and on account of the state.

Section 1160(a)(1) of the Tax Law provides:

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.

Section 526.7(b) of the Sales and Use Tax Regulations provides, in part:

Consideration. The term consideration includes monetary consideration, exchange, barter, the rendering of any service, or any agreement therefor. Monetary consideration includes assumption of liabilities, fees, rentals, royalties or any other charge that a purchaser, lessee or licensee is required to pay.

Opinion

Petitioner is in the business of renting motor vehicles on a short-term basis without a driver to customers in New York. In addition to the standard time and mileage rental charges Petitioner separately charges for optional items. The optional charges for Personal Accident Insurance (PAI), Personal Effects Coverage (PEC) and Supplemental Liability Protection (SLP), pursuant to which the customer is issued coverage under a policy with a licensed insurance carrier, are charges for insurance which are not subject to State and local sales and use taxes. The optional charge for Collision Damage Waiver (CDW), though similar in substance to insurance, is not provided to customers under an insurance policy with a licensed insurance carrier, and in fact is not insurance. However, the charge for CDW is not a charge for the purchase of tangible personal property and is not a charge for any of the enumerated services subject to tax pursuant to section 1105 of the Tax Law, and therefore is not subject to State and local sales and use taxes. Provided Petitioner separately states the charges for PAI, PEC, SLP and CDW when billed to the customer, there will be no sales tax due on these charges. See Alamo Rent A Car, Inc., Adv Op Comm T&F, April 15, 1991, TSB-A-91(33)S.

The customer rental agreement provides that if a rental vehicle is returned to Petitioner with less gas than was provided when the customer rented the vehicle a fuel charge of \$4.75 per 1/8th of

TSB-A-03(26)S
Sales Tax
June 12, 2003

a tank is charged. The definition of consideration in section 526.7(b) of the Sales and Use Tax Regulations includes fees or any other charge that a purchaser is required to pay. When renting a vehicle from Petitioner customers agree to the terms included in the rental agreement. The fuel charge of \$4.75 per 1/8th of a tank which is required for a rental vehicle that is returned with less gas than was provided at the inception of the rental is one of the terms of the rental agreement with the customers. This fee is not an optional purchase similar to the optional fees for additional insurance discussed above but is similar in nature to additional mileage charges computed and imposed upon the return of the vehicle. If the vehicle is returned having used more mileage than allotted or with less fuel than provided, an additional charge is assessed. As such, the charge is a part of the consideration for the rental of the vehicle, just as additional charges at the inception of the lease for vehicle rentals with unlimited mileage or for return of the vehicle without a fueling adjustment would be a part of the taxable receipt for the vehicle's rental. The fuel charge, therefore, is subject to State and local sales and use taxes and the 5% special tax on passenger car rentals.

DATED: June 12, 2003

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