

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

TSB-A-85(14)S
Sales Tax
May 29, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINIONS

PETITION NO. S831130A

On November 30, 1983 a Petition for Advisory Opinion was received from Joy Manufacturing Company, 301 Grant Avenue, Pittsburgh, Pennsylvania 15219.

The issue raised is what is the basis for determining sales tax on a leasing transaction which is capitalized in accordance with accounting requirements as set forth in Statement of Financial Accounting Standards (SFAS) No. 13, "Accounting for Leases."

Petitioner explains that SFAS No.13 identifies two types of leases from the viewpoint of the Lessee: An operating lease and a capital lease. In accounting for the former, the basis for determining sales and use tax is simply the lease payment. Accounting treatment of a capital lease requires recording the property as an asset at the inception of the lease and, simultaneously, creating a liability for the lease obligation. A portion of each periodic lease payment is then charged to interest expense and the remainder is applied to the reduction of the lease liability.

In view of these accounting requirements, Petitioner inquires, is the basis for determining sales and use tax

- (A) The total periodic payment,
- (B) The total periodic payment less the amount allocated to interest expense, or
- (C) The capitalized value of the asset?

Section 526.7 of the New York State Sales and Use Tax Regulations states, in part: "Sale, selling or purchase. (Tax Law 1101(b)(5)(a)) Definition. (1) The words sale, selling or purchase mean any transaction in which there is a transfer of title or possession, or both, of tangible personal property for a consideration. (2) Among the transactions included in the words sale, selling or purchase are exchanges, barter, rentals, leases or licenses to use or consume tangible personal property. . . .(b) Consideration. The term consideration includes monetary consideration. . . . Monetary consideration includes assumption of liabilities, fees, rentals, royalties or any other charge that a purchaser, lessee or licensee is required to pay. (c) Rentals, leases, licenses to use. (1) the terms rental, lease, license to use refer to all transactions in which there is a transfer of possession of tangible personal property without a transfer of title to the property. Whether a transaction is a "sale" or a "rental, lease or license to use," shall be determined in accordance with the provisions of the agreement. (2) Where a lease with an option to purchase has been entered into, and the option is exercised, the tax will be payable on the consideration given when the option is exercised, in addition to the taxes paid or payable on each lease payment.

TSB-A-85(14)S
Sales Tax
May 29, 1985

Section 526.5 of the Sales and Use Tax Regulations states in part: "(h) Interest. (1) Any charge for credit imposed by a vendor and paid by a purchaser in addition to the purchase price under a designation such as interest, service charge or finance charge is not deemed to be part of the sale price of tangible personal property or charge for services rendered. Such charges are consideration for the extension of credit and shall not be included in the receipt subject to sales tax."

A copy of the lease acknowledgement letter supplied by the Petitioner designates Petitioner as "The Lessee" and refers to the transaction as a "Lease" and not a purchase of equipment. Thus the basis for determining the sales and use tax is each lease payment.

The expenditure incurred by lessee in exercising the lease renewal option is also a transaction subject to sales tax as defined in section 1101(b)(5) of the Tax Law.

DATED: May 8, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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