

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

TSB-A-88(32)S
Sales Tax
June 8, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S880309B

On March 9, 1988, a Petition for Advisory Opinion was received from Marine Midland Automotive Financial Corp., P.O. Box 7050, Buffalo, New York 14270-9201.

The issue raised is whether Petitioner should charge sales tax on the actual amounts of its lease payment receipts or on such receipts plus the amount by which the lease payments have been reduced for trade-in automobiles.

Marine Midland Automotive Financial Corporation ("Petitioner"), a New York corporation, is engaged in the business of leasing automobiles to consumers. The leasing transactions are arranged for Petitioner by automobile dealers who act as agents of Petitioner with respect to the leasing transaction. The dealers identify potential lessees from among their customers. If a customer selects an automobile and wants to enter a lease with respect to the automobile, the dealer will attempt to find a third-party lessor such as Petitioner that will extend credit to the customer. Most dealers have arrangements with several third-party lessors and will attempt to provide their customers with the best competitive lease price for the leased automobile.

An automobile dealer is authorized by Petitioner to execute a lease on Petitioner's behalf pursuant to a standard agreement Petitioner enters with such dealer ("Dealer Agreement"). A dealer must present Petitioner with the proposed terms of the transaction, credit information and any other information regarding the potential lessee requested by Petitioner. Petitioner will advise the dealer of a lease approval number if it approves of the transaction. The dealer will then execute the lease on Petitioner's behalf. Pursuant to the Dealer Agreement, execution of the lease by the dealer constitutes the sale of the automobile by the dealer to Petitioner and an assignment of all of the dealer's rights under the lease or other documents executed in connection with the transaction. The dealer is then authorized to deliver the automobile to the customer-lessee on Petitioner's behalf.

If Petitioner approves a lease, the dealer sells the automobile to Petitioner for an agreed-upon price. This price is the Manufacturer's Suggested Retail Price ("MSRP"), adjusted upwards or downwards for any markup or discount negotiated by the dealer, or for a trade-in. Thus, the dealer reduces the price to Petitioner by any trade-in allowance.

Section 1101(b)(3) of the Tax Law defines receipt as "The amount of the sale price of any property and the charge for any service taxable under this article, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by its vendor to the purchaser. . . but excluding any credit for taxable personal property accepted in part payment and intended for resale"

Section 526.5(f) of the sales tax regulations defines the term "trade-in" as follows:

TSB-A-88(32)S
Sales Tax
June 8, 1988

(f) Trade-in. Any allowance or credit for any tangible personal property accepted in part payment by a vendor on the purchase of tangible personal property or services and intended for resale by such vendor shall be excluded when arriving at the receipt subject to tax. Only the net sale price of tangible personal property or the charge for services would be subject to tax. (Emphasis supplied)

Since the customer does not trade the vehicle with the same vendor from whom the customer is leasing the new vehicle, the transaction does not involve a trade-in, but, instead, clearly involves two separate transactions. Accordingly, the transfer of the vehicle from the customer to the automobile dealer is not subject to tax (assuming that the dealer acquires such vehicle for purposes of resale). However, 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.

DATED: June 8, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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