

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

TSB-A-91 (61)S
Sales Tax
September 23, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910611A

On June 11, 1991 a Petition for Advisory Opinion was received from Robert Stillman, C.P.A., 60 East 42nd Street, Suite 850, New York, New York 10165.

The issues raised by Petitioner, Robert Stillman, C.P.A., are whether sales tax is imposed upon the Federal Retail Excise Taxes on Certain Luxury Items included in Chapter 31 of Title 26 of the U.S. Code ("federal luxury tax") and whether sales tax is required to be collected upon the entire lease payment when such lease payment includes the federal luxury tax.

Petitioner submitted the following examples in connection with a car that sells for \$40,000.00:

- Ex. 1 - The outright purchase of a car for \$40,000.00 with the federal luxury tax stated separately.
- Ex. 2 - A 3 year lease of a car that sells for \$40,000.00 where there is no downpayment and the monthly payments include all taxes.
- Ex. 3 - A 3 year lease of a car that sells for \$40,000.00 where the sales tax and federal luxury tax are paid at the inception of the lease and the payments are based only on the cost and residual value.

Section 526.5(a) of the Sales and Use Tax Regulations defines receipt as follows:

(a) Definition. The word receipt means the amount of the sale price of any property and the charge for any service taxable under articles 28 and 29 of the Tax Law, valued in money, whether received in money or otherwise. The following subdivisions of this section discuss elements of a receipt.

Section 526.5(b)(2) of the Sales and Use Tax Regulations provides in part that:

". . .excise taxes which are imposed on the consumer are excluded from the receipts on which sales tax is computed. Among these taxes. . .are: (i) the federal retail excise taxes imposed pursuant to chapter 31 of title 26 of the U.S. Code. . . ."

Section 1111 of the Tax Law contains special rules for computing receipts and consideration. This section was amended effective June 1, 1990 so that sales tax is payable at the inception of the

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lease rather than on each payment in connection with the lease of certain motor vehicles, vessels and noncommercial aircraft. The pertinent part of Section 1111 states that:

". . . 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. . ."

Therefore in accordance with the provisions of Sections 526.5(a) and 526.5(b)(2) of the Sales and Use Tax Regulations the federal luxury tax is not part of the receipt subject to sales tax on the purchase or lease of a car where the federal luxury tax is separately stated and paid by the purchaser.

It is noted that the federal luxury tax with respect to leased vehicles may or may not be factored into the amount subject to sales tax depending on the payment option (of luxury tax) elected by the lessor. The lessor who elects to pay the luxury tax at the time the vehicle is purchased may not exclude that tax expense from the lease charge to its customer when computing the sales tax on the customer's lease payment. The lessor who elects to remit the luxury tax in conjunction with the receipt of each lease payment may separately state the luxury tax component of the lease payment to the lessee and compute the sales tax in the same manner as it is computed on an outright sale.

DATED: September 23, 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.