

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

TSB-A-94 (37)S
Sales Tax
September 6, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940517A

On May 17, 1994, a Petition for Advisory Opinion was received from Woodhill Capital Corp., P.O. Box 1490, Williamsville, New York 14231.

The issue raised by Petitioner, Woodhill Capital Corp., is whether future rental payments on the lease of equipment are subject to the higher sales tax rate where a lease agreement was entered into prior to the effective date of a county's increase in the local sales tax.

Petitioner, as lessor, entered to lease agreements for the rental of tangible personal property prior to September 1, 1992 in Albany and Monroe counties. The lease agreements were in effect for periods subsequent to September 1, 1992. Effective September 1, 1992, Albany County increased the local sales tax rate from 3% to 4%. Also, effective September 1, 1992, Monroe County increased its local sales tax rate from 3% to 3 ½%. The State sales tax rate remained at 4%.

Section 1106(a) of the Tax Law provides as follows:

Sec. 1106. Transitional provisions.--(a) The taxes imposed under subdivision (a), (c) and (d) of section eleven hundred five shall be paid upon all sales made and services rendered on or after August first, nineteen hundred sixty-five although made on or rendered under a prior contract, except as provided in section eleven hundred nineteen, and except that a delivery or transfer of possession of tangible personal property made after said date pursuant to an agreement for the sale of said property made before April first, nineteen hundred sixty-five shall not be subject to tax if: (1) such agreement for the sale of said property was made in writing, (2) the particular item or items of property so sold or agreed to be sold were segregated, before April first, nineteen hundred sixty-five, from any other similar property in the possession of the vendor and identified as having been appropriated to such sale or agreement of sale, and (3) the purchaser, before August first, nineteen hundred sixty-five shall have paid to the vendor not less than ten percent of the sale price of said property.

Section 1217(a) of the Tax Law provides as follows:

Sec. 1217. General transitional provisions.--(a) For the purposes of any local law, ordinance or resolution imposing a local tax pursuant to the authority of section twelve hundred ten, twelve hundred eleven, twelve hundred twelve or twelve hundred twelve-A or increasing the rate of such tax, all references in section eleven hundred six to August first, nineteen hundred sixty-five shall be read as referring to a date four months prior to the effective date of such local law, ordinance or resolution and the reference in subdivision (b) of section eleven hundred six to July thirty-first, nineteen hundred sixty-five shall be read as referring to the day immediately before

the effective date of such local law, ordinance or resolution.

In Petrolane Northeast Gas Service, Inc. v. State Tax Commission, 79 AD2d 1043 (3d Dept 1981) the Court held that a lease transaction is taxed on each rental payment at the time paid, regardless of the date of the agreement and that the tax is on use and possession of the lease property for each rental period as it individually accrues. Thus, although the lease agreement was entered into prior to the effective date of the sales and use tax statute, it was performed thereafter, when each rental payment was made and was within the bounds of the statute and therefore such rental payments were subject to sales tax.

In the instant case, Petitioner entered into lease agreements prior to September 1, 1992, the effective date for increasing the local sales and use tax rate in Albany and Monroe counties. However, rental payments under the terms of such lease agreements for the use of tangible personal property were made to Petitioner subsequent to September 1, 1992. Pursuant to Sections 1106(a) and 1217(a) of the Tax Law and Petrolane Northeast Gas Service, Inc., et al., supra, although the lease agreements were entered into prior to the effective date of the local sales tax increase, a lease transaction is taxed on each rental payment at the time it is paid, regardless of the date of the agreement. Accordingly, since the taxable use of tangible personal property occurred thereafter when the rental payments for the use of the tangible personal property were made, the tax on rental payments made subsequent to September 1, 1992 are computed at the rates which became effective September 1, 1992.

DATED: September 6, 1994

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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