

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

TSB-A-95 (20)S
Sales Tax
June 12, 1995

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S941227C

On December 27, 1994, a Petition for Advisory Opinion was received from Chase Manhattan Automotive Finance Corporation, 900 Stewart Avenue, Garden City, New York 11530

The issue raised by Petitioner, Chase Manhattan Automotive Finance Corporation, is whether an automobile dealer, as lessor, that enters into a lease of an automobile with a customer, as lessee, may exclude the value of any trade-in vehicle transferred to such automobile dealer in calculating the receipts subject to sales tax.

Petitioner, a wholly-owned subsidiary of The Chase Manhattan Bank, National Association, with its principal place of business in New York, engages in automobile leasing on an indirect basis through automobile dealerships located in New York State.

Petitioner enters into non-exclusive dealer agreements with automobile dealers located in New York enabling dealers to offer Petitioner lease programs to their customers. Dealers are not agents of Petitioner and most dealers enter into agreements with several financial institutions and leasing companies to provide their customers with the best competitive lease terms for their automobiles. If a customer wants to enter into a lease under a Petitioner lease program, the dealer has the customer complete a credit application to Petitioner for credit approval. If the customer is approved, the dealer negotiates the value of a customer's trade-in vehicle, if any, accepts such trade-in, if any, in part payment of the lease and completes and executes a lease agreement with the customer.

The dealer is the lessor under the lease. The dealer-lessor then delivers the vehicle to the customer-lessee. Any trade-in vehicle received by the dealer is accepted by such dealer with the intent for resale. Upon completion of the lease documentation and delivery of the vehicle to the lessee, the dealer submits the required lease documentation to Petitioner. Immediately upon receipt of all properly completed documentation as required by Petitioner, Petitioner purchases the lease and the vehicle from the dealer-lessor. If the dealer does not submit properly completed documentation, Petitioner will not purchase the lease.

Section 1101(b)(3) of the Tax Law defines receipts as "[t]he 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 the vendor to the purchaser . . . but excluding any credit for tangible personal property accepted in part payment and intended for resale"

Section 1111(i) of the Tax Law provides, in part, as follows:

(i) Notwithstanding any contrary provisions of this article or other law, with respect to any lease for a term of one year or more of (1) a motor vehicle, as defined in section one hundred twenty-five of the vehicle and traffic law, with a gross vehicle weight of ten thousand pounds or less, . . . or an option to renew such a lease or a similar contractual provision, 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 the first payment under the lease, option, or similar provision, or combination of them, or as of the date of registration of such property with the commissioner of motor vehicles, whichever is earlier.

Section 526.5(f) of the Sales and Use Tax Regulations provides, in part, as follows:

(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.

Example 1: A motor vehicle dealer allows a customer \$850.00 for a used automobile, accepted in part payment against the sale price of \$3200.00 for a new automobile. The used automobile is for resale. The customer is billed as follows:

New automobile	\$3200.00
Trade-in	<u>850.00</u>
Due.	\$2350.00

Receipt subject to tax is \$2350.00.

Section 527.15(c)(5) of the Sales and Use Tax Regulations provides that "[W]here the lessor accepts tangible personal property for resale as a trade-in on a lease agreement, the total receipts do not include the value of the trade-in."

In the instant case, dealers who are not acting as agent for Petitioner, enter into lease agreements with customers for the lease of motor vehicles. Such agreements state that the dealer is the lessor and the customer is the lessee. In addition, the dealer negotiates and accepts in part payment a customer trade-in with the intent of reselling such trade-in. Upon completion of the lease documentation and delivery of the vehicle to the lessee, Petitioner purchases the lease and vehicle from the dealer-lessor. Accordingly, since the dealer, upon execution of the automobile lease, accepts a trade-in with the intent for resale pursuant to Section 1101(b)(3) of the Tax Law and

TSB-A-95 (20)S
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sections 526.5(f) and 527.15(c)(5) of the Sales and Use Tax Regulations the value of such trade-in may be excluded when arriving at the receipt subject to tax.

It is noted that pursuant to Section 1111(i) of the Tax Law, dealers must collect sales tax as of the date of first payment under the lease, option or similar provision, or combination of them, or as of the date of registration of such vehicle with the commissioner of motor vehicles, whichever is earlier.

DATED: June 12, 1995

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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