

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

TSB-H-81 (105) S
Sales Tax
May 26, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800725A

On July 25, 1980, a Petition for Advisory Opinion was received from Tilden Commercial Alliance, Inc., 2 Lambert Street, Roslyn Heights, New York 11577.

The issue raised is the nature of Petitioner's obligations and liabilities under Article 28 of the Tax Law, which imposes the State's Sales and Compensating Use Taxes, with respect to the financing operations described herein.

Petitioner is in the commercial finance business, a substantial part of which consists of the making of loans to leasing companies to finance purchases of equipment to be leased to various lessees, most of whom are located in New York. Petitioner obtains a security interest in the leased equipment and an assignment of the lessor's rights under the equipment leases. The loan payments are required to be made in the form of monthly installments somewhat smaller than the monthly rentals.

In some cases the lessee is not notified of the assignment to Petitioner and is billed monthly by the leasing company, with remittances payable to the leasing company but mailed to a lock-box controlled by Petitioner. In other cases the lessee is notified of the assignment and pays the monthly rental directly to Petitioner. In every case Petitioner collects the remittances and knows the name and address of the lessee making the payment, the amount constituting rental and the amount of sales tax paid.

Petitioner furnishes each leasing company with a monthly report giving the above details except that on "non-notification accounts" the sales tax collected is not stated separately. With the report Petitioner sends leasing companies on a non-notification basis there is included a check for the difference between the total amount collected, including sales tax, and the installment due on the company's loans. Where a leasing company is on a notification basis, Petitioner sends two checks with its report, one payable to the State Tax Commission for the amount of sales tax collected, as shown on the report, and the other payable to the leasing company for the excess of the rentals collected over its loan installment.

Petitioner inquires whether, under these circumstances, it has "...any further sales tax obligation after issuing its checks to the respective leasing companies as stated above."

Section 1105(a) of the Tax Law, contained in Article 28, imposes a tax on the "...receipts from every retail sale of tangible personal property, except as otherwise provided in this article." The term "sale" is defined in section 1101(b) (5) to include "Any ...rental, lease or license to use or consume...." Section 1132(a) of the Tax Law requires the collection of sales tax, at the time of "collecting the price" to which it applies, by a vendor of tangible personal property. The term vendor is defined, in relevant part, in section 1101(b) (8) of the Tax Law, as "A person making sales of tangible personal property or services, the receipts from which are taxed..." under Article 28 of the Tax Law. Accordingly, the leasing company, in the transactions described, is a vendor making retail sales of tangible personal property and is thus required to collect the sales tax due and to remit the same to the Tax Commission.

JAMES H. TULLY, JR., COMMISSIONER LOUIS M. JACOBSON, DEPUTY COMMISSIONER
FRANK J. PUCCIA, DIRECTOR

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Petitioner, while it may not have the responsibility of a vendor to collect taxes, once having come into possession of money constituting State sales tax, acquires an obligation to remit such money to the State Tax Commission. Thus, in City of New York v. Advance Trading Corp., 202 Misc 208 (1952) a factoring corporation was held liable for New York City sales taxes it had collected as a result of an assignment to it of accounts receivable by one of its debtors, a retail coal dealer. The court stated the grounds for its decision, at page 209, as follows:

"Such moneys [the portion of payments received by the factor representing City sales tax payments] were the property of the plaintiff, the City of New York, and the defendant was under a legal obligation to pay the same to the city. It is settled law that where one receives money that rightfully belongs to another the law creates a debt and implies a promise on the part of the person who has received the money to pay it over to the rightful owner (Cohen v. City of New York, 283 NY 112-115)."

Although the cited case involved the New York City sales tax, the same result applies with respect to the State sales tax. Section 1132(a) of the Tax Law provides, in part, that "The tax shall be paid to the person required to collect it as trustee for and on account of the state." Moneys paid to vendors as State sales tax belong to the State. According to the reasoning of the Court in Advance Trading Corp., whoever receives such State sales tax moneys becomes similiarly obligated to pay them over to the State. Petitioner, therefore, by virtue of its receipt of sales tax payments from lessees becomes liable to the State for those amounts. Petitioner is not relieved of this liability by virtue of remitting checks in the amounts of the sales tax payments to the leasing companies. Of course, when the leasing companies in turn remit the amounts paid as tax to the State, Petitioner is no longer liable for such amounts.

Petitioner also inquires as to its responsibility in a situation similar to those described above except that the leasing company is in bankruptcy and is being liquidated by a trustee. Petitioner has withheld its normal remittance, to the leasing company, of sales tax paid on the leases of such company. The fact that the leasing company is in bankruptcy requires no conclusion different from that set forth above. Petitioner is liable to the State for the sales tax payments it has received, and must remit such sales tax payments to the Tax Commission.

DATED: May 11, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau