



Department of Taxation and Finance

Note: Beginning June 1, 2022, the Tax Law allows a credit or refund under certain conditions for sales taxes paid on commercial motor vehicle leases with terminal rental adjustment clauses (TRAC leases). For more information, see [Sales tax refunds related to commercial motor vehicle leases with terminal rental adjustment clauses \(Article 28\)](#).

Important Notice N-92-11, *Accelerated Sales Tax Collections on Certain Leases for a Term of One Year or More*, begins on page 2 below.



Important Notice

N-92-11

(5/92)

Accelerated Sales Tax Collections on Certain Leases for a Term of One Year or More

On June 1, 1990, section 1111(i) was added to the Tax Law which changed the way sales and use taxes must be collected on the lease of certain motor vehicles, vessels and noncommercial aircraft, if the lease for such property, including options to renew, is for a term of one year or more. (See Important Notice N-90-12).

On March 20, 1992, an amendment to the Tax Law was enacted which added a new paragraph (B) to section 1111(i). This new amendment clarifies, among other things, the tax law with regard to the accelerated collection of sales and use tax on long term motor vehicle leases, by clearly establishing and delineating an initial taxable term of 32 months as the period on which sales tax is computed in respect of indefinite-term fleet leased motor vehicles. This new paragraph provides that, where a so-called *fleet lease* (a qualifying lease under section 7701(h)(2)(C)(i)* of the Internal Revenue Code) with an initial term of at least one year includes either (a) an indeterminate number of options to renew or (b) 36 or more monthly options to renew, beyond the initial term; the amount of sales tax required to be collected at the inception of such lease must equal the total amount of sales tax that would be due and payable as if the total sum of the first 32 monthly lease payments were due and payable at the inception of the lease or, if the initial term is greater than 32 months, the sales tax that would be due if the total sum of the lease payments due pursuant to the initial lease term were collected at the inception of the lease.

* Under which the lessee certifies, under penalty of perjury, that it intends that more than 50% of the use of the vehicle subject to the lease is to be in a trade or business of the lessee.

Example 1 – Company A enters into a qualifying fleet lease for a vehicle with an initial term of one year, with options to renew such lease on a month-to-month basis. Company A is required to make lease payments of \$400 per month during the initial one-year term and \$250 per month for each month it chooses to renew such lease. Since the month-to-month renewal option is for an indefinite period, the lessor is required to collect sales tax (at the inception of the lease) on the total amount of payments that would be due as if Company A had made 32 payments under such lease. The amount of tax required to be collected under this lease (assuming a 7% tax rate) would be calculated as follows:

12 payments @ \$400	\$ 4,800
20 payments @ \$250	+ 5,000
32 payments total	\$ 9,800
7% tax rate	x .07
Sales tax due at inception of lease	\$ 686

Example 2 – Company B enters into a qualifying fleet lease for a vehicle with an initial term of 48 months with options to renew such lease on a month-to-month basis thereafter. Payments under the lease are

\$300 per month during the initial term and \$200 per month thereafter. Since the 48-month initial lease term is greater than 32 months, the sales tax due at the inception of this lease (assuming a 7% tax rate) would be calculated based on the initial 48-month lease term as follows:

48 payments @ \$300	\$14,400
7% tax rate	x .07
Sales tax due at inception of lease	\$ 1,008

When a lease subject to the accelerated collection of tax under this new paragraph (B) of section 1111(i) continues beyond the time period which was taxed at the inception of the lease, the sales tax will then be due on a month-to-month basis, to be collected with each monthly lease payment.

Example 3 – Assume the lessee in Example 2 exercises its monthly renewal options after the initial lease term expires. Since the sales tax collected by the lessor at the inception of the lease only reflected the tax due with respect to the initial lease term (48 months), the lessor must collect tax on each of the individual monthly payments as they become due.

Monthly payment	\$ 200
7% tax rate	x .07
Sales tax due to be collected with each option payment	\$ 14

It should be noted that section 1111(i), as amended with respect to motor vehicles, provides that receipts from any option payment made subsequent to the 32-month period (or the initial term, if greater) are not subject to the 5% special tax imposed on passenger car rentals.

Special Rules

Although section 1111(i)(B) was added to the Tax Law on March 20, 1992, its effect is retroactive to June 1, 1990.

Accordingly, receipts contracted to be paid or required to be paid under leases of the type addressed in this notice entered into on or after June 1, 1990, may be subject to additional acceleration. Lessors under such leases may be required to collect additional sales tax from lessees and pay the additional tax over to the Tax Department. If an additional tax payment is necessary, such payment must be made with the filing of the sales and use tax return due June 20, 1992.

To determine whether an additional sales tax payment is required to be made, lessors must review leases and renewal options (of the type affected by this amendment) entered into on or after June 1, 1990, to ascertain how much tax was collected. The lessor must then recompute the amount of sales tax that is due on that lease pursuant to section 1111(i)(B) of the Tax Law. Then the lessor must compare the amount of sales tax computed pursuant to section 1111(i)(B) to the amount of sales tax already collected and paid over to the Tax Department. If the amount of sales tax paid over to the Tax Department under the tax collection method originally used by the lessor is less than that required pursuant to section 1111(i)(B), the lessor must report and remit the difference to the Tax Department with the filing of the sales and use tax return due June 20, 1992.

While the lessors in these leases are entitled to collect the additional tax from the lessee, any failure by the lessor to bill or collect such tax from the lessee does not relieve the lessor of its obligation to pay the additional tax to the Tax Department.

Example 4 – Lessor A and Company B entered into a qualifying fleet lease for a pickup truck. The initial term of the lease was one year, but includes an indeterminate number of month-to-month renewal options. The lease was entered into on September 10, 1990, and Company B has continually exercised the renewal options, and that lease is still ongoing. The lease calls for monthly payments of \$450 per month; the truck is garaged and principally used in an 8% taxing jurisdiction by Company B, which requires Lessor A to collect sales tax at that rate. Lessor A, who files returns on a quarterly basis, collected sales tax at the inception of the lease on the first 13 monthly payments and then collected the tax on a month-to-month basis thereafter. This amounted to a total of \$612 ($\450×13 (9/10/90-10/10/91) $\times 8\%$ + $\$450 \times 4$ (10/11/91-2/10/92) $\times 8\%$) remitted to the Tax Department as of the date of the lessor's last sales tax return. Under the Tax Law as amended, the lessor would have had to collect \$1152 ($\$450 \times 32 \times 8\%$) at the inception of the lease. The difference of \$540 ($\1152 minus 612), must be paid over to the Tax Department by Lessor A with the filing of its quarterly sales and use tax return due June 20, 1992.

The provisions of this amendment apply to all qualifying fleet leases entered into on and after June 1, 1990 (including those which may already have been completed, cancelled or otherwise terminated). Accordingly, even leases which may no longer be in effect must be examined to determine whether additional sales tax must be remitted to the department.

Example 5 – Assume that Company B in example (4) only exercised its month-to-month renewal option for 2

months beyond the initial lease term, for a total of 14 months. Lessor A is required, pursuant to Section 1111(i)(B) of the Tax Law, to collect sales tax on 32 months of lease payments ($\$1152$) less the amount of sales tax already collected ($\$504$ [14 months \times $\$450 \times 8\%$]). Lessor A has the right to collect from Company B in this transaction, an additional sales tax payment of \$648 (1152 minus 504) even though the lease ended November 10, 1991. This additional sales tax must be remitted to the Tax Department with the filing of the sales tax return due June 20, 1992.

Any amount of tax collected pursuant to Article 28A of the Tax Law (the 5% special tax on passenger car rentals) prior to March 20, 1992, may not be credited or used to offset the additional sales tax required to be remitted as a result of section 1111(i)(B) of Article 28 of the Tax Law.

Example 6 – Assume that Lessor A in example (4) had leased a passenger car instead of a pickup truck. After the initial 13 month lease term, when Lessor A began collecting sales tax on a month-to-month basis, in addition to the sales tax, Lessor A began collecting the 5% special tax on each monthly payment. When Lessor A computes the amount of additional sales tax due with respect to such lease (to be paid by June 20 with the sales and use tax return), it is not permitted to combine the amount of the 5% special tax paid on passenger car rentals with the amount of sales tax previously collected on the lease, for the purpose of offsetting the amount of additional sales tax due with the amount of sales tax already paid and remitted to the tax department.

In addition, the amended provisions of the tax law provide that the 5% special tax on passenger car rentals may not be refunded to the taxpayer by the vendor, and the taxpayer will not be granted a refund of the tax by the Tax Department on such lease.

Lessors who have properly collected and timely remitted sales taxes (on these leases) pursuant to the laws in effect prior to June 1, 1990, and who properly and timely comply with the requirement to collect and pay over any additional sales tax under this amendment (if necessary), will not be subject to any penalties or interest that may otherwise be assessed for the nonpayment or late payment of sales taxes. However, with respect to such leases entered into on or after March 1, 1991, interest will be due where the lessor did not collect tax at the inception of the lease on 32 monthly payments or the initial term, if greater.