

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-00(37)S
Sales Tax
October 5, 2000

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S000502E

On May 2, 2000, the Department of Taxation and Finance received a Petition for Advisory Opinion from BMW Financial Services NA, Inc., and Financial Services Vehicle Trust, 300 Chestnut Ridge Road, Woodcliff Lake, NJ 07675.

The issues raised by Petitioners, BMW Financial Services NA, Inc., and Financial Services Vehicle Trust, regarding the computation and payment of New York sales tax on long term motor vehicle leases and based on the facts stated below, are as follows:

- 1) Is an automobile dealer rather than the leasing company considered to be the original lessor.
- 2) Is the dealer rather than the leasing company liable for and responsible for collecting and remitting the sales tax.
- 3) Is a capitalized cost reduction representing the equity in a customer's traded vehicle subject to New York State sales tax.

Petitioners submit the following facts as the basis for this Advisory Opinion.

Petitioners are Delaware corporations with headquarters in New Jersey. Petitioners are not dealers. Petitioners are leasing companies which are in the business of leasing motor vehicles to customers throughout the United States. Petitioners do not have offices in New York.

Petitioners offer long-term lease programs through independently owned and operated motor vehicle dealerships throughout the United States. All of the lease programs are for terms in excess of twelve months. Petitioners provide the lease customer (the lessee) with an option to purchase the motor vehicle at the end of the lease for the residual value. The residual value represents an estimate of the expected fair market value of the vehicle at the end of the lease.

A dealership negotiates the lease of the motor vehicle with a customer. Petitioners set the minimum rates for customer leases.

The dealer completes and executes Petitioners' standard lease agreements with the lessee. At the time the lease is executed, the dealer holds title to the leased vehicle. It is understood that upon execution of the lease agreement, Petitioners will purchase the vehicle from the dealer and the lease agreement will immediately be assigned to Petitioners as the lessor. Petitioners have the right to refuse assignment of any lease not adhering to Petitioners' standards.

The dealer will accept the lessee's personally owned vehicle as a trade-in. The equity from the trade-in will be applied to the lease agreement as a capitalized cost reduction. A capitalized cost reduction is similar to an advance payment which reduces the amount of each future lease payment. Title to and possession of the trade-in vehicle will be passed to the dealer who will resell the vehicle.

Petitioners give the dealer the purchase price of the vehicle less any funds collected by the dealer from the lessee, including the first payment, paid acquisition fees and capitalized cost reductions. Petitioners capitalize and depreciate the full purchase price of the vehicle.

All future payments are made directly to Petitioners by the lessee.

Applicable Law & Regulations

Section 1101(b)(3) of the Tax Law defines receipts as follows:

The 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)(A) of the Tax Law provides, in part:

Notwithstanding any contrary provisions of this article or other law, with respect to any lease for a term of one year or more of . . . 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 such lease, option to renew 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 such lease, option to renew 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:

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.

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Section 527.15(a) of the Sales and Use Tax Regulations provides:

Section 1111(i) of the Tax Law provides special rules for the payment of sales and use tax on certain leases of motor vehicles, vessels and noncommercial aircraft. Rather than the tax being due upon each periodic lease payment, the Tax Law provides that with respect to the leases described in this section the tax is due at the inception of the lease on the total amount of the lease payments for the entire term of the lease.

Section 527.15(c)(5) of the Sales and Use Tax Regulations provides:

Where 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.

Opinion

In this case, dealers enter into lease agreements with customers for the lease of motor vehicles. The dealer negotiates and accepts in part payment of the purchase price a customer trade-in with the intent of reselling the trade-in. The dealer receives the first lease payment from the customer. Based upon the facts presented, the dealer is considered the original lessor, who then assigns the lease to Petitioners after the lease agreement is executed. Upon completion of the lease documentation, Petitioners purchase the lease and the leased vehicle from the dealer. Accordingly, the dealer is responsible for collecting, at the time of receiving the first lease payment due from the lessee, the sales tax due on the lease pursuant to Section 1111(i) of the Tax Law and remitting such tax to the Department with its sales tax return. It should be noted that Petitioners could be liable for sales tax if they actually collected sales tax from customers.

Pursuant to section 1101(b)(3) of the Tax Law and sections 526.5(f) and 527.15(c)(5) of the Sales and Use Tax Regulations, the capitalized cost reduction relating to the lessee's trade-in is not subject to sales tax since the dealer accepts the lessee's vehicle as a trade-in with the intent of reselling the vehicle and applies the amount of the capitalized cost reduction against the consideration due under the lease for the vehicle. See Mercedes-Benz Credit Corporation, Adv Op Comm T & F, March 22, 1996, TSB-A-96(19)S.

DATED: October 5, 2000

/s/

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