

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

TSB-A-85(45)S
Sales Tax
October 16, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S830505A

On May 5, 1983 a Petition for Advisory Opinion was received from Quaker Leasing Inc., 5950 Fisher Road, East Syracuse, New York 13057.

The issues presented by Petitioner are twofold.

I

Petitioner inquires as to whether diesel motor fuel supplied with a rental vehicle should be taxed at the regional average retail sales price if all or a portion of the cost of such fuel is included in the rental rate.

Petitioner is in the business of leasing vehicles. Petitioner's lease agreements provide for the lessor (Petitioner) to supply fuel, however, since the cost of fuel to the lessor may vary, the lease agreement contains a fuel rate adjustment provision which allows the lessor to adjust the periodic billing by a line entry which reflects the lessor's additional fuel costs above the amount used in computing the costs included in the original leasing agreement.

Section 1105(a) of the Tax Law imposes a tax on "The receipts from every retail sale of tangible personal property, except as otherwise provided. . ."

Section 1101(b)(4)(ii)(D) of the Tax Law provides that the term retail sale shall ". . . include the transfer of automotive fuel by a distributor into a motor vehicle . . . of the distributor."

Pursuant to section 1101(b)(4)(ii)(A), automotive fuel is defined to include diesel motor fuel.

Section 560.2(b)(2)(ii) of the Sales and Use Tax Regulations defines a diesel motor fuel distributor to include "Any person who purchases or stores in bulk diesel motor fuel used in whole or in part to operate any motor vehicle owned, leased or operated by him." Based on the above, a retail sale of diesel motor fuel occurs at the time Petitioner transfers diesel motor fuel into the fuel tanks of vehicles owned by it, including vehicles leased to its customers. Since the diesel motor fuel is included in the lease, Petitioner is not deemed to be making retail sales of such fuel to its customers.

Section 1111(e)(6) of the Tax Law and section 560.12(b) of the Sales and Use Tax Regulations provide for the payment of tax on the actual receipt rather than the regional average retail sales price where diesel motor fuel is consumed by a distributor of diesel motor fuel. Therefore, the tax owed by Petitioner on such fuel would be computed at the tax rate in effect in the jurisdiction where the diesel motor fuel is delivered into the fuel tank of Petitioner's vehicle. The amount subject to tax would be Petitioner's purchase price of the fuel excluding Federal and State diesel fuel taxes.

(As to the collection of tax from the lessee on a lease charge which includes fuel, see Section II below.)

II

Petitioner inquires secondly as to what tax rate should be charged, in connection with a vehicle rental, on each of the following:

- (a) the fixed rental charge per week for the vehicle, licenses, Federal highway use taxes, financing etc.;
- (b) the mileage rental charge per mile for maintenance, tires, washing etc.;
- (c) the additional charge to the lessee for fuel cost in excess of the portion included in the lease.

Section 1105(a) of the Tax Law imposes a tax on "The receipts from every retail sale of tangible personal property, except as otherwise provided. . ."

Section 1101(b)(3) of the Tax Law defines the term "receipt" as "The amount of the sale price of any property. . ., valued in money. . ., without any deduction for expenses. . ." Sales and Use Tax Regulation section 526.5(e), which discusses the elements of a receipt, states: "All expenses . . . incurred by a vendor in making a sale, regardless of their taxable status and regardless of whether they are billed to a customer are not deductible from the receipts."

The lease of a motor vehicle is considered a retail sale within the meaning and intent of section 1105(a) of the Tax Law and therefore subject to tax. All other charges, including licenses, other taxes, finance charges and mileage, maintenance, or fuel adjustment charges, whether separately stated or not, are component parts of the lease payment and accordingly are included in the receipt subject to tax (Tax Law section 1101(b)(3)). However, in accordance with Sales and Use Tax Regulation Section 530.4, where the lessor pays all registration fees and all insurance charges, the amount of tax to be collected on the rental or lease of motor vehicles may be computed on 82% (90% in New York City) of the total rental or lease charge. The rate of tax to be applied to these charges depends on the term of the lease. Short term leases (those for less than 6 months), are taxed at the rate in effect in the taxing jurisdiction where the lessee takes delivery of the vehicle; long term leases are taxed at the rate in effect where the vehicle is regularly garaged or stored when not in actual use.

Accordingly, Petitioner must pay the sales tax on his use of diesel motor fuel and must collect tax on any charge for the lease of the vehicle, even though some of the charges included in the lease payment already include sales tax or are charges which by themselves would not be subject to tax.

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If Petitioner did not include the diesel fuel as part of the lease and billed the lessee for the fuel in a separate transaction, Petitioner would then be deemed to be making a retail sale of the diesel fuel. In this instance, Petitioner would be required to collect the appropriate tax on the sale of the diesel fuel from the lessee in addition to the appropriate tax on the rental or lease charge. The tax to be collected on the sale of the diesel fuel would be computed by applying the appropriate tax rate to the regional average retail sales price for diesel fuel in the region in which the sale occurs. Also, Petitioner would not be required to pay a use tax on such diesel fuel.

The provisions of section 1101 and 1111 of the Tax Law and section 560.2 of the Sales and Use Tax Regulations as cited in this Advisory Opinion are applicable to the period from March 1, 1983 through May 31, 1985.

DATED: September 19, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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