

STATE OF NEW YORK

9026

IN ASSEMBLY

January 21, 2022

Introduced by M. of A. McDONALD -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to terminal rental adjustment clauses in motor vehicle leases; and to amend a chapter of the laws of 2021 amending the tax law relating to terminal rental adjustment clauses in motor vehicle leases, as proposed in legislative bills numbers S. 3926 and A. 5401, in relation to the effectiveness thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (B) of subdivision (i) of section 1111 of the tax
2 law, as amended by a chapter of the laws of 2021 amending the tax law
3 relating to terminal rental adjustment clauses in motor vehicle leases,
4 as proposed in legislative bills numbers S. 3926 and A. 5401, is amended
5 to read as follows:

6 (B) (1) Notwithstanding any inconsistent provisions of this subdivi-
7 sion, with respect to a lease of a motor vehicle described in paragraph
8 (A) of this subdivision for a term of one year or more which includes an
9 indeterminate number of options to renew or other similar contractual
10 provisions or which includes thirty-six or more monthly options to renew
11 beyond the initial term, and under which lease the lessee of such motor
12 vehicle has certified in the writing described in clause (i) of subpara-
13 graph (C) of paragraph two of subsection (h) of section 7701 of the
14 internal revenue code of 1986, under penalty of perjury, that the lessee
15 intends that more than fifty percent of the use of such vehicle is to be
16 in a trade or business of the lessee, [~~the lessor shall: (i) pay tax on
17 the receipts from the sale of or consideration given or contracted to be
18 given for the purchase, as measured by subdivision (b) of section eleven
19 hundred ten of this part, of such vehicle for lease; or (ii) collect and
20 pay tax as measured by~~] all receipts due or consideration given or
21 contracted to be given under such lease for the first thirty-two months,
22 or the period of the initial term if greater, of such lease shall be
23 deemed to have been paid or given and shall be subject to tax in accord-
24 ance with the provisions of this subdivision.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 [~~(2) If a lessor collects and pays tax as measured under clause (ii)~~
2 ~~of subparagraph one of this paragraph, for~~] For each such option to
3 renew, or similar provision, or combination of them, exercised after the
4 first thirty-two months, or the period of such initial term, if longer,
5 of any such lease, tax due under this article shall be collected and
6 paid or paid over without regard to this subdivision.

7 (2) If at the termination of a lease described in subparagraph one of
8 this paragraph the lessor refunds a portion of the receipt or consider-
9 ation to the lessee as required by a terminal rental adjustment clause
10 of such lease, either: (i) the lessee may claim a refund or credit for
11 the sales tax it paid on such refunded receipt or consideration; or (ii)
12 the lessor may claim a refund or credit of the sales tax paid by the
13 lessee on such refunded receipt or consideration if it has demonstrated
14 to the satisfaction of the commissioner that it first refunded such tax
15 to the lessee. Notwithstanding the provisions of subdivision (c) of
16 section eleven hundred thirty-nine of this article, such claim for
17 refund or credit shall be considered timely if it is made within three
18 years after the tax was paid by the lessor to the commissioner or one
19 year after such receipt or consideration was refunded to the lessee,
20 whichever is later; provided, however, that no interest shall be paid on
21 a refund or credit made pursuant to this subparagraph.

22 § 2. Section 2 of a chapter of the laws of 2021, amending the tax law
23 relating to terminal rental adjustment clauses in motor vehicle leases,
24 as proposed in legislative bills numbers S. 3926 and A. 5401, is amended
25 to read as follows:

26 § 2. This act shall take effect [~~immediately~~] on the first day of a
27 sales tax quarterly period described in subdivision (b) of section 1136
28 of the tax law next commencing at least thirty days after this act shall
29 take effect, and shall apply to refunds or receipts or consideration
30 paid pursuant to a terminal rental adjustment clause described in para-
31 graph (B) of subdivision (i) of section 1111 of the tax law on and after
32 such date.

33 § 3. This act shall take effect on the same date and in the same
34 manner as a chapter of the laws of 2021 amending the tax law relating to
35 terminal rental adjustment clauses in motor vehicle leases, as proposed
36 in legislative bills numbers S. 3926 and A. 5401, takes effect.