American Automotive Leasing Association

AMERICAN AUTOMOTIVE LEASING ASSOCIATION
TESTIMONY TO THE LEGISLATIVE FISCAL COMMITTEES

2020-21 TAXES BUDGET HEARING
FEBRUARY 13, 2020

Good afternoon. My name is David Rosen and I am General Counsel for the American Automotive Leasing Association (AALA), a national trade organization that represents commercial automotive fleet leasing companies.

Fleet leasing companies comprising the AALA membership own and manage more than 3.5 million vehicles which are leased to small businesses, nonprofit organizations, government entities, and corporations that usually have smaller divisions or franchises in all 50 states. These vehicles range from passenger cars to cargo vans and trucks that are customized and outfitted to fit business purposes, from electrical and plumbing repair and telecommunications installation, to wholesale food and beverage distribution and fuel delivery. In New York, AALA members own and manage on behalf of local businesses over 82,000 vehicles. Of these vehicles, approximately 33% are replaced every year with safer and more fuel-efficient vehicles. Fleet leasing companies make New York businesses of all sizes more competitive by allowing customers to focus on their core business activities rather than managing their vehicle fleets.

Commercial motor vehicle leases have a unique structure that encourages customers to keep newer, safer and cleaner vehicles on the roads. After a minimum term of about one year, the lease can be renewed monthly until the customer returns the vehicle. The actual value of the vehicle at the end of the lease term is then determined, usually by sale at wholesale auction. Each lease agreement features a Terminal Rental Adjustment Clause (TRAC) that provides for a payment adjustment upon lease termination. If the actual value of the vehicle upon lease termination is less than the value estimated in the lease agreement, then the total lease computation may result in the customer having to pay an additional lease payment. Conversely, if the value of the vehicle upon lease termination is greater than the estimated value, then the customer receives a refund of overpaid lease consideration throughout the lease term. Customers prefer the cost savings and efficiency of this structure since it minimizes disputes that otherwise might arise between lessors and customers about vehicle damage or excess wear and tear. Customers are also provided a powerful financial incentive to keep well-maintained vehicles on the road and continually replace aging fleet units with vehicles of a newer model year with state-of-the-art safety technologies and reduced greenhouse gas emissions.

New York tax laws provide that sales tax on commercial lease agreements featuring a TRAC provision that is due at lease inception, based on the total payments for the first 32 months, and subsequently on each monthly renewal thereafter. However, these laws as currently written neglect the sales tax treatment of the adjustment payment made under the TRAC provision—the operative provision of the lease agreement. For example, if a vehicle's actual value upon lease termination is less than the estimated value, then the total lease amount is increased and the customer makes an additional payment to the lessor. The lessor must collect and remit sales tax to New York based on the additional payment. If a vehicle's actual value upon lease termination exceeds the estimated value, then the customer's total lease obligation is decreased and the lessor refunds the customer any overpayment. The lessor should logically exclude the refunded amount from its taxable receipts. However, when a customer receives an adjustment payment from the lessor because the customer returns a vehicle in better condition than initially projected, customers have been unable to receive the benefit of sales tax previously collected and remitted on this overpayment.

The New York State Department of Taxation and Finance has taken the position that fleet leasing companies are not entitled to exclude any TRAC adjustment payments to the customer from receipts subject to sales tax. This position is based on state laws that prohibit a sales tax refund upon the early termination of conventional motor vehicle lease transactions that have a fixed term (i.e., 36 months) and with a fixed lease-end value. Commercial motor vehicle leases featuring a TRAC provision are structured differently than conventional leases since the TRAC provision requires that the actual consideration due—and sales tax on that amount—cannot be known until the end of the lease when the vehicle's actual value is determined. The adjustment payment is then used to compute the total lease payment and associated sales tax due.

New York businesses should pay the sales tax that is actually due on their motor vehicle lease obligations, and AALA requests that the language contained in Senate Bill 3067-A (Breslin) / Assembly Bill 4070-A (Schimminger) be incorporated into the final 2020-21 New York State Budget in order to remedy this inequity. The purpose of this legislation is to ensure that the actual sales tax paid to the state are based on the actual, total, final value of the lease, which is dependent on the final adjustment under the TRAC provision.

New York is at present the only state that collects sales tax on additional payments under the TRAC provision but does not return sales tax when customers are refunded overpayments.

AALA surveyed its members in order to provide an estimate of the fiscal impact to New York if the above-referenced legislation were to be signed into law based on industry-wide figures for calendar year 2017. The total amount of adjustment payments paid by members to their New York customers was $24.8M and the total amount of adjustment payments conversely paid by New York customers to members was $2.5M. AALA members therefore refunded $22.3M of overpayments to New York customers. Consequently, the projected combined annual revenue impact apportioned between the state and localities based off of an average combined state and local sales tax rate of 8% would have be -$1.8M.

Enacting the above-referenced legislation into the final 2020-21 New York State Budget will ensure that New York State businesses of all sizes and types that lease vehicle fleets pay only the actual sales tax that is properly due on their lease transactions. Returning sales tax overpayments to businesses will ensure New York-based customers pay no more tax than is legally due and allow them to deploy these tax overpayments to benefit the New York economy. Thank you.