



## Lessors must collect sales tax at inception of lease says advisory opinion

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The New York Department of Taxation and Finance concluded that a lessor of non-vehicle equipment must collect sales tax on the entire amount of payments at the outset of the lease, rather than as payments become due. This opinion was based, in part, on a finding that the lessor's standard lease is a security agreement for purposes of sales and use tax. And thus, the entire amount of sales tax must be collected upon entering into the lease.

### *What is a "Security Agreement" for N.Y. Sales and Use Tax Purposes?*

The opinion's analysis hinged on the distinction between what constitutes a true lease and what constitutes a security agreement. In connection with the definition of "security agreement" under revised UCC Section 1-201(37), the opinion walked through a facts and circumstances approach to the lessor's standard lease agreements. Importantly, the lessor's lease agreements included a termination provision that provided the lessee with either an option to buy the underlying equipment for \$1 or return the equipment to the lessor, or required the lessee to purchase the equipment for \$1.

The opinion stated that under UCC Section 1-201(37), a facts and circumstances approach is generally applied with the "bright line" exception that a lease qualifies as a security agreement if it is not cancellable by the lessee prior to the end of the lease period and one of the four conditions listed below is satisfied:

1. The original term of the lease is equal to or greater than the remaining economic life of the goods
2. The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods
3. The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement
4. The lessee has an option to become the owner of the goods for no additional consideration

Under the lessor's standard lease, the agreement is irrevocable and the lease also provides the option to the lessee of buying the equipment upon termination for the nominal amount of \$1. These two factors being present in the lessor's standard lease indicates that the lessor's lease is a security agreement.



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