

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RIDINGS EQUIPMENT CORPORATION	:	DECISION
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and	:	
29 of the Tax Law for the Period December 1,	:	
1978 through February 28, 1981.	:	

Petitioner, Ridings Equipment Corporation, 111 Marsh Road, Pittsford, New York 14534, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1978 through February 28, 1981 (File No. 36708).

A small claims hearing was held before John F. Koagel, Hearing Officer, at the offices of the State Tax Commission, Room 1300, One Marine Midland Plaza, Rochester, New York, on December 7, 1983 at 9:15 A.M. with all briefs to be submitted by June 8, 1984. Petitioner appeared by Boylan, Brown, Code, Fowler, Randall & Wilson, Esqs., (Robert E. Brown, Esq., and Howard Konar, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUE

Whether petitioner's rental service charge, which is billed upon the customer's election to purchase equipment, is a nontaxable finance charge or, rather, constitutes a portion of the receipts from the sale of tangible personal property and is thus subject to sales tax.

FINDINGS OF FACT

Petitioner and the Department of Taxation and Finance stipulated to the following facts, numbered one through eighteen.

1. For the period beginning December 1, 1978 through February 28, 1981, the petitioner, Ridings Equipment Corporation, was engaged in the business of leasing, selling, and financing heavy equipment to small and medium-sized contractors.

2. Petitioner and its customers determined at the outset of each transaction whether the customer desired to purchase the equipment or lease it.

3. If a customer desired to lease the equipment, petitioner generally required a rate of periodic payments sufficient to recoup the wear and tear on the equipment.

4. If the customer desired to purchase the equipment, the parties negotiated a rate of periodic payments that was generally lower than the rate for lease transactions. Petitioner examined the credit rating of the customer and, if warranted, filed a UCC-1 Financing Statement in order to protect itself in the event of the customer's bankruptcy.

5. Petitioner then transferred possession of the equipment to the customer under a contract providing for periodic payments from the customer to petitioner and specifying a purchase price for the equipment. The contract contained no fixed term.

6. At any time during the existence of the contract, the customer could elect either to apply 100% of the periodic payments to the purchase price of the equipment or to return the equipment.

7. If the customer elected to apply the periodic payments to the purchase price, the petitioner then billed the customer a charge (called "rental service

charge" in the jargon of the trade) on the amount of the purchase price that the petitioner had financed. The petitioner typically calculated the charge at the rate of one percent per month on the declining balance of the purchase price.

8. If the customer ceased making the periodic payments, the equipment was returned to petitioner and the credit for prior payments was forfeited without further recourse against the customer. No rental service charge was billed to the customer.

9. The majority of petitioner's customers could not afford the 25% down payment required by banks and finance companies for loans to purchase heavy equipment. Petitioner's purpose in deferring the full payment of the purchase price and the collection of the interest was to allow its customers to accumulate their down payments while using the equipment. In addition, petitioner typically arranged financing on behalf of a customer for the balance of the purchase price.

10. During the period in question, no customer ever returned a piece of equipment transferred pursuant to this arrangement. Even if a customer fell behind in making the periodic payments, petitioner continued its efforts to arrange financing and recovered the amount of past due payments from the lender upon payment of the balance due on the purchase price.

11. The practices outlined above may be illustrated by the following example, based on a representative contract from the period in question:

a. Petitioner and its customer entered into a contract on June 15, 1978, pursuant to which petitioner transferred possession of a bulldozer valued at \$29,500 to the customer in exchange for periodic payments of \$1,500 per month.

b. The contract provided that "100% paid rentals to apply to purchase plus 1% on declining balance."

c. Petitioner filed a UCC-1 Financing Statement at the commencement of the contract.

d. For the months of June, July, August, and September, petitioner billed the customer \$1,500 plus \$105 sales tax.

e. By October, the customer had accumulated over 20% of the purchase price, and elected to apply this amount to the balance due.

f. On its final statement, petitioner billed the customer a rental service charge of \$1,030, calculated at 1% over the declining balance of the purchase price, i.e., \$280 for June, \$265 for July, \$250 for August, and \$235 for September. Petitioner's final statement was as follows:

<u>Description</u>	<u>Amount</u>
Bulldozer	\$29,500
Plus Sales Tax	2,065
Plus Rental Service Charge	1,030
Plus Filing Fee	4
Subtotal	\$32,599
Less Billed Rentals	6,000
Less Billed Taxes	420
Subtotal	\$26,179
Less Amount Financed	24,959
Amount Due	\$ 1,220

12. Petitioner financed its inventory of equipment in one of two ways: through a third party financial institution, or through a floor plan arrangement with the manufacturer.

13. If it obtained financing through a third party lender, petitioner paid interest charges to the lender on the amount financed.

14. If it financed the equipment through a floor plan arrangement, petitioner paid rental service charges to the manufacturer. The manufacturer typically did not bill rental service charges to petitioner until thirty days after

petitioner had leased or sold the equipment. If petitioner leased the equipment, the manufacturer continued billing monthly rental service charges through the term of the lease. If petitioner sold the equipment, the manufacturer billed a rental service charge only once, thirty days after the sale.

15. The rental service or interest charges paid by petitioner were based on the wholesale price of the equipment. The rental service charges billed by petitioner to its customers were calculated based on the retail price of the equipment. By billing rental service charges to its customers based on the retail price of the equipment, petitioner was able to recoup more than the charges paid to the manufacturers and lenders.

16. Throughout the period in question, petitioner collected and remitted sales tax on the full amount of the periodic payments whether or not the customer elected to apply them to the purchase price.

17. Petitioner also collected and remitted sales tax upon payment of the balance due on the purchase price.

18. Petitioner did not collect or remit sales tax on the rental service charge.

19. On December 18, 1981, the Department of Taxation and Finance issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to petitioner for \$7,439.26 plus accumulated interest of \$1,407.75 for a total amount due of \$8,847.01.

CONCLUSIONS OF LAW

A. That section 1105(a) of the Tax Law imposes a tax upon the "receipts from every retail sale of tangible personal property except as otherwise provided in [Article 28]." Section 1101(b)(3) of the Tax Law defines receipt as the "amount of the sale price of any property and the charge for any service

taxable under [Article 28], valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts...".

B. That 20 NYCRR 526.5(h)(1) specifically excludes from the definition of receipt "(a)ny charge for credit imposed by a vendor and paid by a purchaser in addition to the purchase price under a designation such as interest, service charge or finance charge... Such charges are consideration for the extension of credit and shall not be included in the receipt subject to sales tax."

C. That the rental service charge billed by the petitioner upon the customer's election to purchase equipment constituted receipts from the sale of tangible personal property. Therefore, the Audit Division properly determined that the rental service charges were subject to tax.

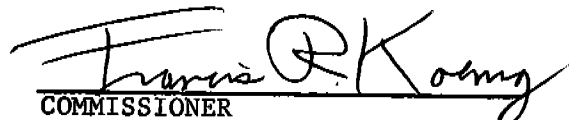
D. That the petition of Ridings Equipment Corporation is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 18, 1981 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

APR 27 1985


PRESIDENT


COMMISSIONER


COMMISSIONER