

## BUREAU OF LAW

## MEMORANDUM

*Sales Tax Determinations A-Z*  
*Commercial Credit*  
*Industrial Corp.*

TO: Commissioners Murphy, Palestin and Macduff  
FROM: E. H. Best, Counsel  
SUBJECT: COMMERCIAL CREDIT INDUSTRIAL CORP.

Application for Refund of Sales and  
or Use Tax Paid Under Article 28  
for the Taxable Period Commenced  
August 1, 1965

A hearing on the above matter was held before  
Mr. Vincent P. Molineaux, the Hearing Officer, and the  
minutes of the hearing and the exhibits are in the file.

The issue raised herein is whether or not sales or use taxes may be imposed on monthly rent payments collected from various lessees during the period commenced August 1, 1965 and ended August 31, 1965 on leases of motor vehicles and equipment under leases in effect prior to August 1, 1965. As more specifically set forth in the proposed determination, the applicant is in the business of renting motor vehicles and equipment to commercial organizations and to effect such rentals uses various types of printed leases prepared by it. Although each of the leases may vary with respect to the terms thereof, each of the leases provides that they are intended to be leases, and further provide either for "monthly rental rates payable in advance on the first day of each and every calendar month during the term of the lease," or "fixed rentals payable monthly in advance." The applicant contends that rent payments for the month of August 1965 on such leases entered into prior to August 1, 1965 are not subject to the New York State sales and use tax because such monthly payments are prior to the effective date of Article 28 of the Tax Law. Section 1101(b)(5) of the Tax Law in Article 28 of such law includes in the definition of sale, selling or purchase, a "rental, lease or license to use or consume." Subdivision (a) of section 1106 of the Tax Law in Article 28 of such law provides that the taxes imposed by section 1108(a) of the Tax Law shall be paid on all sales made and services rendered on and after August 1, 1965 although made on or rendered under a prior contract.

The primary issue is, therefore, whether or not the monthly rent payments are taxable despite the fact that the leases were executed, and the delivery of the vehicles or equipment had taken place, prior to August 1, 1965. It has been held by the courts of

various states that sales or use taxes were imposable on monthly rentals even though lease agreements were executed prior to the effective date of acts or amendments thereto imposing such taxes (Canton Co. of Baltimore v. Comptroller, 231 Md. 294 (Court of Appeals, Md., 1963); Broadacre Dairies, Inc. v. Evans, 193 Tenn. 441 (Supreme Court, Tenn., 1952)). The leading case under similar facts set forth in the application herein, and under an amendment to an act of the State of Washington defining the term sales, with respect to the Retail Sales or Compensating Use Tax Law of such state, to include "renting or leasing" is the case of Gandy v. State of Washington, 359 P. 2d 302 (Wash. Supreme Court, 1961) 2 Wash. Tax Cases, para 200-271 (CCH). The court in sustaining the tax, held:

"Each rental payment relates to a period of possession. It is this possession for which the lessee contracts and for which the periodic consideration is given. A lease if viewed in this light is not a single transaction (or sale), but a contract for a series of transactions--the exchange of rental payments for continued enjoyment of possession."

I, therefore, concur in the Hearing Officer's opinion that a sales or use tax may be imposed on such monthly rentals and that the taxpayer's application for a refund of New York State sales or use tax should be denied.

/s/

E. H. BEST

Counsel

MS:ca

May 24, 1966

**BUREAU OF LAW**

# MEMORANDUM

TO: Commissioners Murphy, Palestine and Macduff

FROM: Vincent P. Malineaux, Hearing Officer

SUBJECT: Commercial Credit Industrial Corp.;  
Application for revision and refund of sales tax.

A hearing on the above matter was held before me in Albany, New York November 30, 1965.

The issue raised is whether rental collected for the lease of motor vehicles and other tangible personal property after August 1, 1965, under leases which were in effect prior to August 1, 1965, are subject to the sales tax.

The petitioner rents motor vehicles and other industrial equipment on leases for a two-year period or an indeterminate period for which the lessee is billed on a monthly basis. There is never any transfer of title of the leased vehicles or equipment to the lessee.

Based upon the provision in section 1106 of the Tax Law requiring payment of the tax on "all sales made and services rendered on and after August 1, 1965, although made on and rendered under a prior contract," the accompanying proposed determination has been drafted denying the application for refund and I recommend that it be signed by the Commission.

**VPK: 2008**

**January 18, 1966**

/s/

VINCENT P. MOLINEAUX

## NOTING OFFICER

/s/

MARTIN SCHAPIRO

**Approved**

**Approved**

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION  
OF  
COMMERCIAL CREDIT INDUSTRIAL CORP.  
FOR REFUND OF SALES OR USE TAX PAID UNDER  
ARTICLE 28 OF THE TAX LAW FOR THE TAXABLE  
PERIOD COMMENCED AUGUST 1, 1965 AND ENDED  
AUGUST 31, 1965  
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The applicant, Commercial Credit Industrial Corp. having duly filed an application for refund of New York State sales or use tax paid under Article 28 of the Tax Law for the period commenced August 1, 1965 and ended August 31, 1965, and evidence with respect thereto having been received at a hearing held at the office of the State Tax Commission, Department of Taxation and Finance Building, State Campus, Albany, New York before Vincent P. Molineaux, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer appeared and was represented by Donald W. Fulton, Esq., its Treasurer, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the applicant is a person required to collect the tax and pursuant to Certificate of Authority No. 52-0712956 has collected State and local sales or use taxes in the amount of \$2,141.78 during the aforementioned period; that the applicant has filed a sales and use tax return reporting the amount collected and has paid that amount to the State Tax Commission.

(2) That the applicant filed an application for refund in the amount of \$1,166.56 alleging that this amount represents the

New York State sales or use taxes imposed at the rate of 2% upon monthly rent payments collected from lessees during the period commenced August 1, 1965 and ended August 31, 1965 on leases of motor vehicles and equipment under leases in effect prior to August 1, 1965.

(3) That the applicant is in the business of renting motor vehicles and equipment to commercial organizations; that such motor vehicles and equipment are rented in accordance with written leases entered into by the applicant as lessor and various lessees; that the written leases are printed leases prepared by the applicant lessor; that each of the leases vary with respect to terms of payment, duration of the lease terms, nature and amount of the rent charged, the rights of the parties as to termination of the lease, and the liabilities of the parties thereunder; however, each of the leases provide that they are agreements for leasing only, or are and are intended to be leases, and that further the lessee does not acquire any right, title or interest in or to the vehicles or units leased except the right to use them under the terms of the lease; that each of the leases further provide either for "monthly rental rates payable in advance on the first day of each and every calendar month during the term of the lease," or "fixed rentals payable monthly in advance."

(4) That the applicant contends that the rent payments for the month of August 1965 on such leases entered into prior to August 1, 1965 are not subject to the New York State sales or use tax imposed under Article 28 of the Tax Law because such monthly payments are payments on leases entered into prior to August 1, 1965, the effective date of Article 28 of the Tax Law.

(5) That subdivision (a) of section 1105 of the Tax Law in Article 28 of such law imposes a sales tax on the receipts

from every retail sale of tangible personal property.

(6) That section 1110 of the Tax Law in Article 28 of such law imposes a compensating use tax for the use within this State on or after August 1, 1965 of tangible personal property purchased at retail.

(7) That section 1101(b)(5) of the Tax Law in Article 28 of such law includes in the definition of sale, selling or purchase, a "rental, lease or license to use or consume."

(8) That subdivision (a) of section 1106 of the Tax Law in Article 28 of such law provides that the taxes imposed by section 1105(a) of the Tax Law shall be paid on all sales made and services rendered on and after August 1, 1965 although made on or rendered under a prior contract.

Based upon the foregoing findings and all the evidence presented herein, the State Tax Commission hereby

**DETERMINES:**

(A) That the rent payments reported by the applicant on his return for the period August 1, 1965 through August 31, 1965 even though paid pursuant to leases entered into a date prior to August 1, 1965 are receipts from the sale or use of tangible personal property made on or after such date.

(B) That, accordingly, the entire amount of the refund of \$1,166.66 requested by the applicant was properly paid to the State Tax Commission; that no monies or taxes were improperly or erroneously collected by the State Tax Commission; that the taxpayer's application for refund is hereby denied.

DATED: Albany, New York on this 22nd day of June, 1966.

**STATE TAX COMMISSION**

/s/ JOSEPH H. MURPHY  
**President**

/s/ IRA J. PALESTIN  
**Commissioner**

/s/ JAMES R. MACDUFF  
**Commissioner**