



Private Letter Ruling No. 03-002

Redacted Version

Sales Tax

Sales Tax Treatment of Revenue Sharing Agreements for Leased Property

February 25, 2003

Facts

A leasing company (hereafter “Lease Company”) leases tangible personal property to industrial customers in Louisiana. Lease Company and the owner of tangible personal property (hereafter “Tangible Personal Property Owner”), entered into an agreement whereby Tangible Personal Property Owner supplies items to Lease Company for rental to Lease Company’s customers. The tangible personal property is provided at Tangible Personal Property Owner’s discretion as it becomes available. Tangible Personal Property Owner assists with employee training and technical support. In return, Lease Company pays a “usage fee” to Tangible Personal Property Owner based on a percentage of the lease payments that Lease Company receives from its customers. The usage fee is paid only when Lease Company collects lease payments on property provided by Tangible Personal Property Owner. Lease Company develops the local rental market, provides security and insurance for the tangible personal property, and collects and remits sales tax on the rental payments received from its customers.

Issue

Are the “usage fees” Lease Company pays to Tangible Personal Property Owner equivalent to lease or rental payments for tangible personal property acquired for subsequent lease or rental?

The Law

Louisiana Revised Statutes 47:302(B), 321(B), 331(B), and Section 2(B) of the Louisiana Tourism Promotion District sales tax ordinance impose sales and use tax upon the lease or rental of tangible personal property in this state. Revised Statute 47:301(7) defines “lease or rental” as “...the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter, for a consideration, without transfer of the title of such property.” Except for mineral drilling equipment, the lease or rental of tangible personal property for re-lease or re-rental is not exempt or excluded from sales and use tax. If the usage fees are considered lease or rental payments, they are subject to tax.

Analysis

This matter was addressed in *Rent-It Company, Inc. of Alexandria v. Shirley McNamara, Secretary of the Department of Revenue and Taxation, State of Louisiana* (490 So 2d 750). In that case, Rent-It Company, Inc. of Alexandria (hereafter Rent-It-Alexandria) provided rental inventory to Rent-It Company, Inc. of Pineville (hereafter Rent-It-Pineville) in exchange for 30 percent of the rental revenue Rent-It-Pineville received from its customers. The tangible personal property was placed at the discretion of Rent-It-Alexandria, which received income only when Rent-It-Pineville rented the inventory to final consumers. The court looked to Articles 2669 and 2674 of the Louisiana Civil Code to determine whether the agreement was actually a lease or rental.

Art. 2669. Lease or hire, definition.

Lease or hire is a synallagmatic contract, to which consent alone is sufficient, and by which one party gives to the other the enjoyment of a thing, or his labor, at a fixed price.

Art. 2674. Lease of things.

To let out a thing is a contract by which one of the parties binds himself to grant to the other the enjoyment of a thing during a certain time, for a certain stipulated price which the other binds himself to pay him.

Relying on these articles, the court ruled:

Even though it is very hard to define or to classify the relationship between Rent-It-Alexandria and Rent-It-Pineville; whether it is a partnership, joint venture (which Appellees allege herein) or an agency relationship, it is very clear that this relationship and these transactions are *not* a lease according to our Civil Code articles. The key article here is Louisiana Civil Code article 2674. According to that article, the lease of a thing grants to the lessee the enjoyment of an item “during a certain time.” In this particular case, Rent-It-Alexandria did not grant to Rent-It-Pineville the use or enjoyment of any item for a certain period of time, since Rent-It-Alexandria maintained complete control and could remove any of the items in the Pineville store.

The contract between Lease Company and Tangible Personal Property Owner parallels the arrangement in *Rent-It Company, Inc of Alexandria*. Tangible Personal Property Owner, like Rent-It-Alexandria, retains control over the property, supplying tangible personal property at its discretion as it becomes available. In return, Lease Company, like Rent-It-Pineville, shares the rental payments collected from its customers with Tangible Personal Property Owner as a “usage fee” and no fee is paid unless the property is rented. Because the facts in *Rent-It Company, Inc. of Alexandria* are so similar to those presented here, we must conclude that Lease Company, like Rent-It-Pineville, does not have enjoyment of the property “during a certain time” and therefore is not leasing or renting the property from Tangible Personal Property Owner.

The Louisiana sales and use tax statutes also impose tax on the sale of tangible personal property and the providing of certain enumerated services. From an analysis of the facts, it is obvious that the transaction in question is not a sale of tangible personal property since there is no transfer of ownership of the property. A review of the services that are taxable under Louisiana sales and use tax laws does not reveal any scenario where the revenue sharing agreement between Lease Company and Tangible Personal Property Owner would be taxable under those statutes either.

Conclusion

Revised Statutes 47:302(B), 321(B), 331(B), and Section 2(B) of the Louisiana Tourism Promotion District sales tax ordinance impose sales or use tax upon the payments paid or received for the lease or rental of tangible personal property. However, the arrangement between Lease Company and Tangible Personal Property Owner does not meet the definition of a lease or rental of tangible personal property and is not subject to tax under these statutes. Furthermore, the transaction discussed is not subject to tax under any other provision of sales tax law.

Questions or comments about this matter can be directed to the department’s Taxpayer Services Division at (225) 219-7356.

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Secretary

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