

Private Letter Ruling No. 06-005

**Redacted Version**

Sales Tax

**Is the State Sales Tax Due on the Payment that a Lessee Is Required to Make to a Lessor Following the Destruction of the Lessor's Leased Assets by Hurricane?**

**April 26, 2006**

**Facts**

A lessor and a lessee entered into an agreement for the true lease of tangible personal property. Under the agreement, the lessee made monthly payments to the lessor for the use of the property. The lease agreement was to have continued for several years, and was to have concluded with the lessee having the right, but not the obligation, to purchase the property for a price at or near the expected market value of the property.

Under the terms of the lease, if the leased asset were destroyed, the lease would terminate and the lessee would be obligated to pay to the lessor a lump-sum amount equal to the lessee's remaining rental obligations under the lease. In August 2005, the asset was destroyed as the result of Hurricane Katrina, and the lessee was required to make the payment to the lessor equal to the remaining rental obligations under the lease.

**Issue**

Whether a payment required to be made by the lessee pursuant to the terms of an equipment lease agreement, as a result of the destruction of the leased property in a hurricane, is a payment for the lease or rental of tangible personal property that is subject to lease tax in Louisiana?

**Department Analysis**

La. Rev. Stat. Ann. § 47:302(B), 321(B), 331(B), and the sales tax ordinance of the Louisiana Tourism Promotion District levy a total four percent sales tax on certain types of transactions, including, but not limited to, the following:

- The sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state, of each item or article of tangible personal property; and
- The lease or rental within this state of each item or article of tangible personal property.

La. Rev. Stat. Ann. § 47:301(12) defines the term "sale", in pertinent part, as "any transfer of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property, for a consideration . . ." La. Rev. Stat. Ann. § 47:301(7) defines the term "lease or rental", in pertinent part, 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".

In the facts associated with this request for Private Letter Ruling, the required payment after the destruction of the leased asset is not tendered to the lessor as consideration for the transfer of title to or temporary or permanent possession of the leased asset. Because it was destroyed by Hurricane Katrina and does not exist, transfer of title to or possession of the asset is not possible. The payment that was required to be made under the agreement after the destruction of the asset was made to carry out the lessee's obligations under the original agreement with the lessor to indemnify any loss of or destruction of the leased asset, and not as consideration for the lease, rental, or sale of the leased asset.

### **Ruling**

The department ruled that the sales tax or lease/rental tax is not due on the payment that is made after the destruction of the asset that is attributable solely to the lessee's obligation to indemnify the destruction of the lessor's asset. The department further ruled that the state sales tax was due on any portion of the final payment that was attributable to the lease/rental of the asset for periods before its destruction by Hurricane Katrina

Sincerely,

Cynthia Bridges  
Secretary

By: Raymond E. Tangney  
Senior Policy Consultant  
Policy Services Division  
(225) 219-2780

This correspondence constitutes a private letter ruling (PLR) by the Louisiana Department of Revenue, as provided for by section 61:III.101 of the Louisiana Administrative Code. A PLR provides guidance to a specific taxpayer at the taxpayer's request. It is a written statement that applies principles of law to a specific set of facts or a particular tax situation. A PLR does not have the force and effect of law, and is not binding on the person who requested it or on any other taxpayer. This PLR is binding on the department only as to the taxpayer to whom it is addressed, and only if the facts presented were truthful and complete and the transaction was carried out as proposed. It continues as authority for the department's position unless a subsequent declaratory ruling, rule, court case, or statute supersedes it.