
Opinion of the Tax Commissioner

Date Issued: January 3, 1991

Opinion No: 90-0011

Tax: Sales

XXXX
XXXX
XXXX

Subject: Price

This request for an opinion of the Tax Commissioner was received on October 18, 1990. Specifically, it concerns the applicability of sales tax to payments made by a lessee for personal property tax on leased equipment.

XXXX (Corporation) has alleged the following factual circumstances:

1) On or about XXXX, "A" entered into a written agreement with "B". The Master Agreement sets forth the general terms and conditions under which "A" will lease to "B" certain computer equipment, including machines, field installable upgrades, and feature additions or accessories marketed by "C". A Term Lease Supplement (Supplement) is executed each time specific equipment is leased by "A" to "B". Each Supplement identifies the specific item or items being leased and the specific monthly rental relating to the leased item or items. Each Supplement expressly refers to and incorporates by reference the Master Agreement. "A" and "B" have executed several Supplements from time to time pursuant to which equipment is leased to "B" by "A".

2) At the termination of a Supplement's lease term, "B" is required to return to "A" the equipment leased pursuant to that particular Supplement. However, "B" has an option to purchase the leased equipment, at fair market value, at any time upon the giving of three months' prior written notice. "B" may also extend the lease at the end of the initial lease term.

3) Paragraph 15 of the Master Agreement provides that Rent shall be based upon the Rent schedule set forth in the pertinent Supplement. Paragraph 16 of the Master Agreement provides that Rent shall be paid by "B" as determined in paragraph 15. That paragraph also provides for the monthly invoicing for and payment of Rent by "B".

4) Paragraph 27 of the agreement provides as follows:

TAXES. Lessee shall promptly reimburse Lessor for, or shall pay directly if so requested by Lessor, as additional Rent, all taxes, charges, and fees imposed or levied by any governmental body or agency upon in connection with the purchase, ownership, leasing, possession, use or relocation of the Equipment or Programming or in connection with the financing of LPM Charges or otherwise in connection with the transactions contemplated by the Lease, excluding, however,

all taxes on or measured by the net income of Lessor. Upon request, Lessee will provide proof of payment. Any other taxes, charges and fees relating to the licensing, possession or use of licensed program materials will be governed by the License Agreement.

5) The Master Agreement also contains an addendum, executed on the same date as the Master Agreement, which makes the following modification to paragraph 27:

Paragraph 27 – Taxes – In line 9 after “income” add “or net worth.”

In line 9 after “net worth” add “and all other taxes, charges or fees resulting from the conduct of Lessor after the Rent Commencement Date.”

6) There is no Supplement between the parties which changes the relevant terms of paragraphs 15, 16, or 27 of, or the addendum to, the Master Agreement.

7) “B” uses the leased equipment to render various financial and credit services to members of an affiliated group of corporations, of which group “B” is a member.

8) “A” lists the equipment which is leased to “B” pursuant to the Master Agreement and Supplements for Ohio personal property tax purposes and pays Ohio personal property tax on the equipment. Pursuant to paragraph 27 of the agreement, “A” invoices “B” separately from any regular monthly invoice for Rent for the personal property tax which it pays to the State of Ohio with respect to the leased equipment.

The question posed by Corporation is as follows: “In the situation described above, is the personal property tax which is separately invoiced pursuant to paragraph 27 of the Master Agreement part of the rental price of the leased equipment, and is “A” legally required to charge to and collect from “B” sales tax upon the separately-invoiced personal property tax?”

Based upon the information presented, the personal property tax payments made by “B” are part of the rental price of the leased equipment, and “A” is therefore required to charge and collect sales tax on those payments.

R.C. 5739.01 provides, in part, that:

(B) “Sale” and “selling” include all of the following transactions for a consideration in any manner, whether absolutely or conditionally, whether for a price or rental, in money or by exchange, and by any means whatsoever:

(1) All transactions by which title or possession, or both, of tangible personal property, is or is to be transferred, or a license to use or consume tangible personal property is or is to be granted....

(H) (1) “Price” ...means the aggregate value in money of anything paid or delivered, or promised to be paid or delivered, in the complete performance of a retail sale, without any deduction on account of the cost of the property sold, cost of materials used, labor or service cost, interest or discount paid or allowed after the sale is consummated, or any other expense.... (Emphasis added.)

The property tax on leased equipment is essentially an expense item for the lessor. Payment of property tax by the owner of the property is not a sale, and is not subject to sales tax. However, according to the facts presented by Corporation, paragraph 27 of the lease agreement provides that the lessee shall reimburse the lessor for all taxes on ownership of the leased equipment. Such reimbursement is deemed by the Tax Commissioner, and is recognized by the language of the lease agreement, to be the payment of additional rent. It is part of the aggregate value in money of that which is promised to be paid. The Board of Tax Appeals in Highway Equipment Company v. Lindley (Feb. 15, 1985) , Case No. 81-C-603, unreported, found that personal property tax charges set forth in lessor invoices are lessor’s own expense and fall within the purview of the “any other expense” language of the statute. The Board concluded that personal property tax charges are properly included as part of the taxable price of the equipment.

Accordingly, it is the opinion of the Tax Commissioner that “B’s” payments of personal property tax are part of the price, and “A” is required to charge and collect sales tax thereon.

In addition, the tax consequences stated in this opinion may be subject to change for any of the reasons stated in R.C. 5703.53 (C). It is the duty of the taxpayer to be aware of such changes. R.C. 5703.53 (E).

Joanne Limbach
Tax Commissioner