



May 1, 2003 (Re-issued May 2, 2008)
Pennsylvania Sales and Use Tax
No. SUT-03-017
Various Types of Leases

ISSUES/CONCLUSIONS:

Is sales tax due on each lease payment when title transfers implicitly when the conditional sales contract is signed?

Yes. Sales tax is due on each lease payment.

Is sales tax due on each lease payment when the lease agreement has a one-dollar purchase option at the end of the lease term but title transferred implicitly when the lease agreement was signed?

Yes. Sales tax is due on each lease payment.

Is sales tax due on each lease payment when the lease agreement has a one dollar purchase option at the end of the lease term and title is retained per the lease agreement; however, the title transfers at the inception of the lease as a matter of law?

Yes. Sales tax is due on each lease payment.

Is sales tax due on each lease payment when the lease agreement has a one dollar purchase option at the end of the lease term and the agreement is silent regarding the title transfer; however, the title transfers at the inception of the lease as matter of law?

Yes. Sales tax is due on each lease payment.

FACTS:

Lessor is a leasing company that leases all types of tangible personal property other than automotive vehicles.

It has different financial products in the form of leases that are offered to customers. Equipment is purchased from independent third party vendors and leased to the lessee using one of its four different contracts. There is no gain on the sale of the equipment from Lessor to the customer. Interest income is earned on the contract with the lessee. The Lessor's standard lease contract contains multiple purchase options, including a one dollar purchase option. Title is addressed in the contracts with the following provisions:

SCENARIO 1: TITLE . . . Upon the commencement date of the applicable schedule, title to the Equipment shall pass to you.

SCENARIO 2: TITLE . . . Except for Leases with a \$1.00 purchase option, we will have title to the Equipment. If you have a \$1.00 purchase option and/or the Lease is deemed to be a security agreement, you grant us a security interest in the Equipment and all proceeds

therefrom. You authorize us to sign financing statements and file financing statements on your behalf.

SCENARIO 3: TITLE . . . We own the Equipment and you have the right to use the Equipment for the full Leases term provided you comply with the terms and conditions of this agreement and the lease.

SCENARIO 4: TITLE . . . The lease agreement is silent as to title.

The Lessor does not take depreciation deduction on the equipment under any of these contracts. The lessee is considered to be the owner of the equipment for tax and general accepted accounting principals. The Lessor merely has a security interest in this financing arrangement.

DISCUSSION:

The Tax Reform Code of 1971, as amended, provides for the imposition of a sales and use tax on each sale at retail of tangible personal property. 'Sale at retail' includes any transfer for a consideration of the ownership, custody or possession of tangible personal property including the grant of a license to use . . . whether such transfer be absolute or conditional and by whatsoever means the same shall have been effected." 72 P.S. § 7201(k)(1).

The Lessor's agreements provide for the transfer of tangible personal property to the lessee for a consideration. The lessee right to use the property is sufficient for the imposition of the tax on each payment made for the property.

Lessor is required to collect sales tax from its lessee for the transfer of the tangible personal property regardless of the scenario used.