

SC PRIVATE REVENUE OPINION #02-4

SUBJECT: Liability for Personal Property Taxes for Leased Property
(Property)

REFERENCES: S. C. Code Ann. Section 12-37-710 (2000)
S. C. Code Ann. Section 12-37-900 (2000)
S. C. Code Ann. Section 12-37-970 (2000)
SC Revenue Ruling #93-11

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2001)
SC Revenue Procedure #02-3

SCOPE: A Private Revenue Opinion is a written statement issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. **A Private Revenue Opinion does not have the force and effect of law, and is not binding on the person who requested it or the public.** It is, however, the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

Questions:

1. For property tax purposes, who is considered to be the owner of the leased personal property subject to Capital Lease Type A and Type B discussed in the facts below?
2. Who is responsible for filing personal property tax returns for the leased personal property subject to Capital Lease Type A and Type B discussed in the facts below?

3. Who is liable for the payment of personal property taxes for the leased personal property subject to Capital Lease Type A and Type B discussed in the facts below?

Conclusions:

1. The lessee of the personal property is considered to be the owner of the personal property subject to Capital Lease Type A and Type B.
2. The lessee of the personal property subject to Capital Lease Type A and Type B is responsible for filing personal property tax returns for the leased property.
3. The lessee of the personal property subject to Capital Lease Type A and Type B is liable for the payment of personal property taxes due on the leased property.

Facts:

Lessor is a lessor of tangible personal property consisting of computer equipment. This property is leased to lessees (“Lessees”) who use it in South Carolina. Lessor leases the property to the Lessees located in South Carolina under two separate kinds of leases - Capital Lease Type A and Capital Lease Type B.

Capital Lease Type A provides that Lessor retains legal title to the leased property as security until the end of the term of the lease and the completion by the Lessee of all lease payments. At this point in time, the Lessee has the option to purchase the property for one dollar. In practice, the Lessor does not require payment of the dollar and title automatically passes to the Lessee at the end of the lease term.

Capital Lease Type B provides that the Lessor retains legal title to the leased property as security until the end of the lease term and the completion of all scheduled payments. At the end of the lease term, the Lessee has the option to purchase the property at a pre-stated price, however, that price is always significantly less than what the Lessor, at the time the lease was entered into, projected the fair market value of the property would be at the end of the lease term. The Lessee only receives title to the property if it exercises the purchase option and buys the property at the end of the lease term. For federal income tax purposes, the Lessor records both Capital Lease Type A and Capital Lease Type B as conditional sales and does not depreciate the leased property for federal income tax purposes.

We have been asked to assume, and are assuming, that the Lessee is the owner of the property for income tax purposes and that the Lessee of the personal property is entitled to income tax depreciation on the leased property subject to the leases. Both types of leases are noncancelable and in both types of leases the Lessee assumes the benefits and risks inherent in the ownership of property.

Discussion:

Code Section 12-37-710 provides:

Every person of full age and of sound mind shall annually list for taxation the following personal property, to wit:

- (1) All the tangible personal property in the State owned or controlled by him;
- (2) All the tangible property owned by him or by any other resident of this State and under his control which may be temporarily out of the State but is intended to be brought into the State;
- (3) All tangible personal property owned or controlled by him which may have been sent out of the State and not yet sold; and
- (4) All the moneys, credits, investments in bonds, stocks, joint-stock companies or otherwise, owned or controlled by him, whether in or out of this State.

Under the general rules of property tax, the lessor of personal property is required to file a personal property tax return and pay any property tax that is due with respect to the leased assets. However, South Carolina Revenue Ruling #93-11 provides an exception to that general rule.

SC Revenue Ruling #93-11 provides that if the lease in question is in fact a financing arrangement, the lessee of the leased property is responsible for South Carolina personal property taxes on the leased property. SC Revenue Ruling #93-11 goes on to conclude that it is appropriate to use income tax ownership to determine ownership of the leased property for property tax purposes. If the lessee of the leased property is treated as the income tax owner of the property, the lessee will also be treated as the owner of the property for property tax purposes. As owner, the lessee is liable for any personal property tax due on the leased property.

The Lessor has represented that under both Capital Lease Type A and Capital Lease Type B, the Lessee is treated as the owner of the leased property for income tax purposes and is allowed to depreciate the property for income tax purposes. Accordingly, in the Department's opinion, for South Carolina property tax purposes, the Lessee will be considered the owner of the property leased pursuant to Capital Lease Type A and Type B. Pursuant to Code Section 12-37-710 and SC Revenue Ruling #93-11, the Lessee will be liable for personal property taxes for property leased pursuant to Capital Lease Type A and Type B.

While SC Revenue Ruling #93-11 does not specifically address who is required to file property tax returns for the leased property, since the Lessee is considered to be the owner of the property, in the Department's opinion, the Lessee is required to file all personal property tax returns for the property leased pursuant to Capital Lease Type A and Capital Lease Type B.

Code Section 12-37-900 provides in relevant part:

Every person required by law to list property shall, annually, between the first day of January and the first day of March, make out and deliver to the auditor of the county in which the property is by law to be returned for taxation a statement, ...of all real and personal property possessed by him, or under his control, on the thirty-first day of December next preceding, either as owner, agent, ...or holder with the value thereof, on such thirty-first day of December, at the place of return, ...[emphasis added]

In the Department's opinion, since the Lessee is treated as the owner of the leased property for tax purposes under Capital Lease Type A and Capital Lease Type B, the Lessee is required to file a return with the auditor listing the leased property.

In certain instances, in lieu of filing a return with the auditor, a taxpayer may be required to file a return with the Department. Code Section 12-37-970 reads, in relevant part:

The assessment for property taxation of merchants' inventories, equipment, furniture and fixtures, and manufacturers' real and tangible personal property, and the machinery, equipment, furniture and fixtures of all other taxpayers required to file returns with the South Carolina Department of Revenue for purposes of assessment for property taxation must be determined by the department from property tax returns submitted by the taxpayers to the department on or before the last day of the fourth month after the close of the accounting period regularly employed by the taxpayer for income tax purposes in accordance with Chapter 7 of this title. ...

Again, in the Department's opinion, if the Lessee is a merchant or a manufacturer and is treated as the owner of the leased property for income tax purposes, the Lessee will be required to file a return pursuant to Code Section 12-37-970 listing all the leased property subject to Capital Lease Type A and Capital Lease B.

Conclusion:

In the Department's opinion, under the facts presented above, the Lessee of the personal property is considered to be the owner of the property subject to Capital Lease Type A and Type B and will be responsible for filing the personal property tax returns for the leased property and is liable for the payment of personal property taxes due on the leased property. The conclusions above are based on the representations concerning Capital Lease Type A and Capital Lease Type B made by the Lessor. To the extent that these representations are not correct, this private revenue opinion is invalid.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Elizabeth Carpentier
Elizabeth Carpentier, Director

October 4, 2002
Columbia, South Carolina

CAVEAT: This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the Department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.