



EQUIPMENT LEASING AND FINANCE ASSOCIATION
1825 K Street NW
Suite 900
Washington, DC 20006
P 202.238-3400
F 202.238-3401
www.elfaonline.org

February 7, 2014

Colorado Department of Revenue
c/o Mr. Neil L. Tillquist
1375 Sherman Street, Room 409
Denver, CO 80261

Re: FYI Sales Bulletin 56

Dear Mr. Tillquist:

The Equipment Leasing and Finance Association (ELFA) requests guidance from the Colorado Department of Revenue regarding the proper collection of state administered local sales tax on leases of equipment (other than vehicles). This request is triggered by substantial changes made to FYI Sales Bulletin 56 issued April 2013. Particularly, a substantive policy change was made regarding the collection of state administered local taxes without the usual procedure allowing public comment before establishing new regulation. ELFA members would like additional information and guidance regarding the change.

Background:

Prior to April 2013, Colorado advised that state administered local sales tax applied to leases of equipment only if the lessor had a form of business location in the same jurisdiction as the lessee. Guidance from the Colorado Department of Revenue has never previously indicated that the delivery or location of leased equipment would serve as a form of business location for purposes of collecting local sales tax.

FYI 56 prior to April 2013:

Equipment and Other Tangible Personal Property Leases

The major difference between taxes collected on motor vehicle leases and taxes collected on other tangible personal property leases is in the local tax collection requirement. In the case where city, county and special district taxes are collected by the state, local taxes are applicable only if the lessor has a form of business location in the same jurisdiction as the lessee. Any office, shop, warehouse, salesroom or the temporary but frequent presence of an employee for repair, sales or service purposes is a business location. If the lessor of tangible personal property does not have a business location in the city, county or special district, no local tax is to be collected. In the case where there is no business location, no local tax should be collected even if the property is delivered within the boundaries of the local taxing entity. NOTE: RTD/CD/FD taxes are applicable to the leases of all lessees residing within the district.

In April 2013, FYI 56 was revised. It now advises lessors to obtain a sales tax license and declares the location of the delivery, use or storage of tangible personal property determines

applicable local sales taxes. The April 2013 revision represents a substantive policy change. However, we fail to find any stimulus in legislation, case rulings or promulgation of regulation.

FYI 56 effective April 2013:

Equipment and Other Tangible Personal Property Leases

A lessor who leases tangible personal property to be used or stored in Colorado is required to obtain a sales tax license. The location of the delivery, use or storage of the tangible personal property determines what local jurisdictional sales taxes will be collected.

Request:

Our members are diligent in their efforts to comply with the requirements of the various jurisdictions. Change, such as this, generates concerns related to this compliance and impacts our relationships with our lease customers. We would like an opportunity to discuss this change and its impact on our industry. Specific concerns that need to be addressed include the following:

- What is the basis for the substantive change in policy?
- How does this change reconcile with C.R.S §29-2-105(b), which states that when a retailer delivers its goods, either by its own vehicle or by common carrier to a customer at a destination outside the local tax jurisdiction in which the retailer is located, then the retailer does not collect the local sales tax of the taxing jurisdiction in which the retailer is located?
- Does this change apply only prospectively?
- How does this change impact existing leases?
- What provisions have been made to allow lessors to transition to this new interpretation?
- What, if any, changes should be expected when the amended definition of “retail sale” (C.R.S. §39-26-102(9), as amended in 2013 by HB 1295) goes into effect on July 1, 2014?

We appreciate your consideration in allowing us to discuss this change. We look forward to hearing from you soon regarding this matter.

Sincerely,



Dennis Brown
Vice President
State Government Relations

Enclosures: FYI 56 – dated 5/07
FYI 56 – dated 4/13