

November 10, 2006

Carlos Serrano Terron
Assistant Secretary
Internal Revenue Area
Puerto Rico Department of Treasury
10 Paseo Codandonda
Puerta De Tierra
San Juan, Puerto Rico 00901

Dear Mr. Secretary:

The Equipment Leasing and Finance Association ('ELFA') appreciates the cooperation provided by the Commonwealth in its implementation of the Sales and Use Tax. ELFA respectfully submits comments on the Regulation approved and posted on October 13, 2006 for the purpose of implementing the Sales and Use Tax ('IVU'), Subtitle BB of Puerto Rico Internal Revenue Code of 1994. The comments, following immediately herein, are intended to gain further certainty as to the application of IVU to certain commercial transactions of Lease and Finance.

1. Article 2301-1. – Definitions. Subsection (f) Lease (2)(ii), in an unofficial English translation, reads as follows:
(ii) the transfer of possession or control of property under an agreement that requires the title transfer once the required payments are fulfilled and the price of purchase option does not exceed the greater of one hundred (100) dollars or one (1) percent of the required total payment.

Comments: Two important items of the Streamlined Sales and Use Tax Agreement ('SSUTA') Lease definition are missing from this Regulation statement to give it the intended meaning.

1. Required payments extends to the payment of a nominal purchase option.
2. The term 'nominal' before 'purchase option' adds clarity

It is our recommendation that an English translation of Subsection (f)(2)(ii) reads as follows:

(ii) the transfer of possession or control of property under an agreement that requires the title transfer once the required payments and the payment of a nominal purchase price are fulfilled and the price of nominal purchase option does not exceed the greater of one hundred (100) dollars or one (1) percent of the required total payment.

2. Article 2301-1. – Definitions. Subsection (f) Lease (2)(ii) purpose and example, in an unofficial English translation, reads as follows:

*The purpose of this clause (ii) is clarified with the following example.
Example: An individual rents an automobile of a financial institution by a predetermined period and after fulfilling the required payments, it has the option to acquire title of the automobile by paying one (1) dollar. This transaction will not be considered a lease, but a financing.*

Comments: We agree with the accuracy of this statement. We do not agree with the use of an ‘automobile’ in the example as it creates confusion because automobiles are excluded property. We feel the example can be improved if it references another property, such as a ‘computer’, and goes further to discuss how the IVU is collected from the lessee.

After reading this example, ELFA has logistical questions on how the IVU tax is to be handled on a lease considered a financing. Does the lessor issue an exemption certificate to the original vendor and collect tax on the purchase price from the lessee? Or does the lessor pay tax to the original vendor? In answer to the questions also consider if banks that only transact financing leases with a one (1) dollar option benefit from this example?

Would a lessor that has both leases as a continuing sale and financings be able to issue an exemption certificate on all payments to vendors and collect tax on its purchase price of a financing; tax on rental payments of a lease as a continuing sale? Puerto Rico Banks, Lessors and Lessees will benefit from this example if it discusses how and when tax is to be collected.

3. Article 2301-1. – Definitions. Subsection (pp) Taxable Services (1) (ii) (a), (b), (c) and (d). in an unofficial English translation, uses ‘**or**’ to connect common characteristics of a lease as a taxable service. The ‘**or**’ should be replaced with ‘**and**’, as all characteristics are required for the lease transaction to be considered a taxable service.

We continue to have concerns on the following matters not covered by the Regulation and would appreciate scheduling an appointment in conjunction with a conference call to discuss.

- Whether leasing of motor vehicles to commercial customers is subject to the sales tax, as the purchase of these assets are still subject to the excise tax.
- The ability to resolve inconsistent treatments with the Municipalities and differences contained in their Ordinances.

- What progress has been made to ensure that the Municipalities will accept the regulatory direction issued by the Commonwealth.
- Whether destination sourcing applies to the transaction when the Lessor does not have a business location in the Commonwealth/Municipality other than the leased property used by its Lessee.
- What assistance and cooperation is available to obtain resale certificates, registrations, filings, etc. for Lessors.
- Whether all Municipalities will be collecting the 1.5% rate as of November 15,2006.

The equipment leasing and finance industry has benefited from the cooperative manner in which your office has assisted in examining regulations implementing sales and use tax. I look forward to continuing that collaboration.

Sincerely,

Dennis Brown
Vice President
State Government Relations