

PUBLICATION

Spotlight on Alabama: Equipment Leasing Companies Being Assessed Use Tax for Leased Property

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Alabama is perhaps unique in that the state and its localities do not include rental of tangible personal property in the definition of a taxable sale for sales tax purposes. Instead, the state and many (but not all) localities impose a separate rental or lease tax, which is at the same rate as the sales tax but which is specifically imposed on the lessor, not the lessee. This lease tax can produce some quirky predicaments in Alabama, most notably that passing through the economic amount of such tax to the lessee, as is normally the case in the industry, has the unintended effect of putting that collected amount in the taxable base for the lessor. Lessors must perform a "gross-up" calculation in order to collect the full amount from the lessee.

Recently another quirk of this Alabama taxing scheme has emerged. At least one Alabama county, Tuscaloosa County, has taken the position that property leased in that county, which does not impose a lease tax, subjects the lessor to a use tax collectible by the county. In effect, the county not only is treating the use tax as a complementary tax to the sales tax, which is sanctioned by the Alabama tax statutes, but also is treating the use tax as a complementary tax to the lease tax, which the Alabama tax statutes do not specifically permit.

At least one out-of-state equipment leasing company is fighting the assessment of use tax in this manner in an Alabama Circuit Court. A ruling favorable to the county in this case could open the door to possible back tax liabilities for many years for equipment lessors who have leased equipment into Alabama cities or counties which do not impose a lease tax.

If you have any questions regarding the application of Alabama state or local sales, use or lease taxes, please contact a member of our Tax Department.