



November 7, 2003 (Reissued November 8, 2008)
Pennsylvania Sales and Use Tax
No. SUT-03-062
Lease Charges for Advertising Space

ISSUE:

Are Lessor's charges to a customer for the display of the customer's advertising material on Lessor's phone boards or in Lessor's display cases subject to sales tax?

CONCLUSION:

Yes. The Lessor's charges are subject to tax because the charges are for a license to use tangible personal property since the charges require the Lessor's tangible personal property to be used for the display of the customer's property.

FACTS:

Lessor has agreements with seven airports within the Commonwealth to manage and maintain the airports' display advertising programs. Lessor has requested a ruling regarding the applicability of sales and use tax to the fee paid by customers for the display of advertising material on Lessor's equipment.

Lessor's concession agreements require it to install numerous advertising display cases and reservation phone boards at the airports. The equipment is primarily of the type that remains tangible personal property, and all the equipment remains the property of the Lessor. Lessor capitalizes the equipment and depreciates the cost of the equipment over the term of the contract.

Lessor charges a quarterly advertising fee to display the graphics materials provided by a customer. Lessor, in turn, remits to the airport a percentage of the gross revenue derived from the advertisers at that airport.

Advertisers prepare and retain ownership of their own graphics and other advertising content provided for insertion into the display spaces. Lessor continually provides maintenance and janitorial services for the display cases and phone boards.

DISCUSSION:

The Tax Reform Code of 1971, as amended, provides for the imposition of a sales and use tax on the purchase price of tangible personal property and certain services when sold at retail. 72 P.S. § 7201. A 'sale at retail' includes a transfer for a consideration of the possession or custody of tangible personal property including the grant of a license to use or consume regardless of the terms employed by the parties to describe the transaction.

Lessor claims that its display cases and reservation phone boards when installed at an airport remain the property of the Lessor. Additionally, Lessor states that the equipment is "primarily of a non-permanent nature."

Lessor's customers pay a fee for the display of their advertising materials which requires the Lessor to insert the customers' property on Lessor's equipment. The fee grants the Lessor's customers a license to use the Lessor's equipment for its advertising materials. This fee is subject to tax because a grant of a license to use tangible personal property is taxable.