

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 97-006

**This document may not be used or cited as precedent. Ala. Code
§40-2A-5(a) (1993 Replacement Volume).**

TO:

FROM: Assistant Commissioner of Revenue
Alabama Department of Revenue

DATE: June 18, 1997

RE: Applicability of rental tax to the options
outlined in Taxpayer's request.

ISSUES AND FACTS

The facts as represented by Requestor are as follows:

Bank "A" proposes to create a business unit within the bank that will own and lease automobiles. Generally, customers for new automobiles will be referred by dealers to Bank "A". The customer will arrange for the purchase of an automobile from the dealer, but instead of purchasing the vehicle, Bank "A" will purchase the vehicle and then lease the vehicle to the customer. Attached is a proposed Motor Vehicle Lease Agreement ("Agreement") that would be used by Bank "A" in this business. Under the provisions of Paragraph 2(C)(2) there is a reference to "sales/use tax". In fact, this amount is actually rental tax and not sales or use tax. The reason for this is because Bank "A" anticipates that new banking regulations will become effective later this year concerning consumer lease transactions, and will revise this form to reflect those regulations. In the revised form the word "rental" will be substituted for the words "sales/use" in line 2(C)(2).

Paragraph 9 of the Agreement provides in pertinent part as follows:

You ("Lessee") will pay all fees, charges and taxes related to this Lease and the Vehicle except Lessor's income taxes, whether they are assessed against you, the Lessor or both, even if they are assessed after this

Lease ends.

Bank "A" proposes to treat the rental tax in one of two ways, designated in its request as Option A or Option B. Under either option Bank "A" will calculate the rental tax based upon the aggregate of the state rental tax and any applicable city and county rental tax. If Bank "A" uses Option A, it will calculate for line 2(C)(2) gross receipts for rental tax purposes as being in the base monthly payment set forth on line 2(C)(1). The actual rental tax paid would be calculated on the sum of line 2(C)(1) and (2) and any difference between the tax so calculated and the tax listed on line 2(C)(2) will be paid by Bank "A" without direct reimbursement by the customer.

Under Option B Bank "A" will "gross up" the rental tax to an amount greater than the rental tax calculated on the base monthly payment to such an extent that the rental tax calculated on the sum of the base monthly payment and the amount set forth as rental tax on line 2(C)(2) will equal the rental tax set forth on line 2(C)(2).

To illustrate, assume that the base monthly payment is \$100.00 and the combined state, city and county rental tax is 4%. Under Option A the base monthly payment would be \$100.00 while the rental tax set forth on line 2(C)(2) would be \$4.00. In this case the actual rental tax owed would be based upon \$104.00 (line 2(C)(1) and line 2(C)(2)) or \$4.16. The \$.16 would be absorbed by Bank "A" or at least not directly reimbursed by the customer. Under Option B the monthly payment would still be \$100.00 but the amount set forth for the rental tax on line 2(C)(2) would be \$100.00 divided by 96% minus \$100.00. The result of this calculation is \$4.1667. Thus, the sum of the base monthly payment and the rental tax is \$104.1667. This amount when multiplied by 4% results in \$4.1667, so that Bank "A" would have been exactly reimbursed by its customer for the amount of rental tax due on both the base amount and the rental tax.

In addition to the monthly payment, Bank "A" will collect a security deposit up front. The security deposit is referred to on line 2B(ii). Paragraph 18 of the Agreement specifically governs security deposits and provides as follows:

Your ("Lessee") security deposit may be used by Lessor to pay all amounts that you fail to pay under this Lease. Upon termination of this Lease, Lessor will refund to you any portion of the security deposit not applied to amounts you owe. Security deposits cannot be used as a Monthly Payment. You will not earn interest on your security deposit. Any interest of monetary benefit to

Lessor which may accrue as a result of Lessor's retention of the security deposit will neither be paid to you nor applied to reduce your obligations under this Lease.

Bank "A" intends to collect from the customer rental tax under line 2(B)(5)¹ on the security deposit under either Option A or Option B. The rental tax when collected as to the state's portion will be paid to the state and in the case of the city and/or county portion (if applicable) will be paid to the city and/or county in which the vehicle is garaged, not the location in which the vehicle is purchased. Upon termination of the Lease, Bank "A" will claim a credit on rental tax returns for both the state and the city or county involved, based upon the amount of the refund of the security deposit multiplied by the rental tax rate. In the case of the city and/or county tax, Bank "A" may claim the credit prior to termination of the lease if Bank "A" is not otherwise paying rental tax to such jurisdiction in a monthly amount sufficient to absorb the refund. The intent of the procedure is to not get in the position of having to ask the city and/or county to actually write a refund check.

The issues are as follows:

(1) Whether, if Bank "A" pays rental tax on monthly payments under Option A, that will be in accordance with the laws of the State of Alabama?

(2) Whether, if Bank "A" pays rental tax on monthly payments in accordance with Option B, that will be in accordance with the laws of the State of Alabama?

(3) Whether, if Bank "A" pays rental tax on security deposits under either Option A or Option B, that will be in accordance with the rental tax laws of Alabama?

(4) Whether, if Bank "A" claims a rental tax refund upon refunding the security deposits, such amount will be acceptable under the laws of the State of Alabama?

LAW AND ANALYSIS

Ala. Code §40-12-220(5) (1993 Replacement Volume) defines "leasing or rental" as follows:

A transaction whereunder the person who owns or controls

¹When the form is revised "Rental Tax" will be substituted for "Sales Tax" at line 2(B)(5).

the possession of tangible personal property permits another person to have the possession or use thereof for a consideration and for the duration of a definite or indefinite period of time without transfer of the title to such property.

In addition, Ala. Code §40-12-222 (1993 Replacement Volume) provides for a leasing tax levy at the rate of 1½% of the gross proceeds derived by the Lessor from the leasing or rental of automotive vehicles.

Issues 1 and 2:

Both Option A and Option B are clearly rental tax transactions as Bank "A" will be the owner of the automobiles and will allow its customers to have possession or use of the automobiles for a consideration and for a period of time without transfer of title to such automobiles. In addition, the rental tax calculations presented in both Option A and Option B provide for the collection and remittance of rental tax by Bank "A" as Lessor in accordance with the laws of the State of Alabama, with the main difference in the calculations consisting of the actual amount of direct reimbursement of the rental tax to Bank "A" by its customers.

Issues 3 and 4:

On Bank "A"'s collection of a security deposit "up front" to be "used by Lessor to pay all amounts that [Lessee] fails to pay under this lease", the collection of rental tax would also be in accordance with the rental tax law, as the security deposit can be used as a rental payment that Bank "A"'s customer fails to make. If Bank "A"'s customer pays all amounts due under the lease and the security deposit is returned to Bank "A"'s customer at the end of the lease, then Bank "A" will be allowed to claim a credit or refund on rental tax returns based upon the amount of the refund of the security deposit multiplied by the rental tax rate.

HOLDING

Based on the particular facts of this case and the specific Motor Vehicle Lease Agreement provided by Bank "A", rental tax would be due and payable by Bank "A" on monthly lease payments in accordance with both Option A and Option B as outlined in Bank "A"'s request. In addition, Bank "A"'s payment of rental tax on security deposits under either Option A or Option B will be in accordance with the rental tax laws of Alabama, as would Bank "A"'s claiming of a rental tax refund or credit on security deposits refunded to Bank "A"'s customers and not used as a rental tax

payment.

GEORGE E. MINGLEDORFF III

HEM:MJM:pj