



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

October 19, 2011

Account ID: [REDACTED]

Federal ID: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: [REDACTED]

Dear Mr. [REDACTED]

We are in receipt of your February 17, 2011 letter and attachments requesting a private letter ruling on the taxability of a lease termination fee on behalf of your above referenced client. You provided a copy of the Master Equipment Lease Agreement dated October 24, 2006 between [REDACTED] (" [REDACTED] ") and [REDACTED]; a letter dated September 21, 2010 from [REDACTED] to [REDACTED] and a copy of Form GEN-58, Power of Attorney and Declaration of Representative, dated February 16, 2011.

In your letter, you state "[t]he facts are as follows:

1. On October 24, 2006, [REDACTED] entered into an Equipment Lease (the 'Lease') with [REDACTED] ([REDACTED]). A copy of the Lease is attached as Exhibit A.
2. The lease term was for 5 years, ending in 2011.
3. Monthly lease payments were [REDACTED].
4. In the Fall of 2010, [REDACTED] elected to terminate the Lease (because it had leased replacement equipment from a third party).
5. [REDACTED] contacted [REDACTED] which agreed to terminate the lease in exchange for a lease termination fee of [REDACTED] and payment of North Carolina sales tax on the termination fee of [REDACTED]. A copy of [REDACTED] letter dated September 21, 2010, is attached as Exhibit B.
6. [REDACTED] . . . paid the termination fee and the sales tax of [REDACTED].
7. [REDACTED] . . . agreed to refund the sales tax paid upon receipt of a private letter ruling from the Department of Revenue stating that the termination fee is not subject to North Carolina sales tax."

You further advised, "[p]aragraph 2 of the Lease provides that '[t]he Lease may not be terminated or canceled for any reason whatsoever, except as expressly provided in the Lease.' Paragraph 9 of the Lease provides for instances pursuant to which [REDACTED] as Lessor could terminate the Lease, but the lease contains no provisions to which [REDACTED] as Lessee could terminate the Lease. Therefore, the Lease Termination fee was paid pursuant to a separate agreement (the [REDACTED] letter dated September 21, 2010) and was not a part of the 'gross receipts derived from the [Lease].' Because the termination fee was not paid as a part of the gross receipts it is not subject to sales taxes; we request a Private Letter Ruling is confirmation of our position."

The September 21, 2010 letter from [REDACTED] to [REDACTED] provides, that "[t]his letter is in response to your request that Lessee be permitted to terminate the Lease Lessor will permit the Lease to be terminated prior to the expiration of the existing term if on or before November 26, 2010 (the 'Cutoff Date', a regularly scheduled payment date), Lessee pays to Lessor, in immediately available funds and in accordance with Lessor's payment instructions, all amounts, including applicable taxes, outlined below, and returns the equipment to Lessor at a location to be chosen by [REDACTED] free of all liens and encumbrances, and in accordance with the conditions set forth in Section 11 of the Lease."

	Amount
Termination Price	[REDACTED]
Sales Tax	[REDACTED]
Property Tax (Estimated 2010)	[REDACTED]
September 29, 2010 Payment	[REDACTED]
October 29, 2010 Payment	[REDACTED]
Total Amount	[REDACTED]

N.C. Gen. Stat. § 105-164.4(a)(2) provides in part that "[a] privilege tax is imposed on a . . . retailer's . . . gross receipts, as appropriate. . . . The applicable percentage rate applies to the gross receipts derived from the lease or rental of tangible personal property. . . . The term "gross receipts" appears all-encompassing, connoting the total or entire amount, without deduction or offset of any kind. *Sheriff v. Moore*, 105 GA.App. 833 (1962). The Department does not agree that the September 21, 2010 letter from [REDACTED] to your client represents a new, separate lease agreement between two entities. It is the Department's opinion that the termination price of [REDACTED] for early termination constitutes gross receipts derived from the lease or rental of tangible personal property pursuant to the Lease of October 24, 2006 and is subject to the State and local sales tax rates of tax.

This ruling is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. If the facts and circumstances given are not accurate, or if they change, then the taxpayer requesting this ruling may not rely on it. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material aspect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that this document is not to be cited as precedent and that a change in statute, a regulation, or case law could void this ruling.

Very truly yours,

[REDACTED]
Administration Officer
Sales and Use Tax Division

[REDACTED]
cc: [REDACTED], Director of Sales and Use Tax Division
[REDACTED], Assistant Director of Sales and Use Tax Division