

810-6-5-.09.01 Leasing And Rental Of Tangible Personal Property - Rule No. 2.

(1) §40-12-222, Code of Ala. 1975, as amended, levies a privilege or license tax upon every person, firm or corporation engaged or continuing within this state in the business of leasing or renting tangible personal property an amount equal to four percent of the gross proceeds of any such business, except the rate of two percent shall apply to the gross proceeds derived by the lessor for the leasing or rental of linens and garments, and one and one-half percent shall apply to the gross proceeds derived by the lessor for the leasing or rental of automotive vehicles, truck trailers, semitrailers, and house trailers.

(2) §40-12-220(4) of the rental tax law defines gross proceeds as the value proceeding or accruing from the leasing or rental of tangible personal property, including any license or privilege taxes passed on to a lessee by a lessor, without any deduction on account of the cost of the property so leased or rented, the cost of materials used, labor or service cost, interest paid, or any other expense whatsoever, and without any deductions on account of loss, and shall also include on the part of any person claiming exemption under subdivision (4) of §40-12-223 an amount equal to the amount of rental paid on any tangible personal property acquired under such exemption and thereafter diverted to the use of such person.

(3) The gross proceeds derived by the lessor of tangible personal property for services provided which are incidental to the lease of the property and embodied in the lease agreement are subject to rental tax, even if the charge for such service is separately stated. When, under a separate optional agreement, the lessor of tangible personal property performs independent services that are separate, distinct, and not incidental to the leasing of the property, the gross proceeds from those independent services are not derived from the lease and are not subject to rental tax. To be excluded from the amount subject to rental tax, the charges for the independent services must be separately stated.

(a) When a lessor engaged in leasing or renting tangible personal property requires maintenance of the item leased or rented as part of the leasing or rental contract, the gross proceeds derived therefrom, including charges for maintenance, will be subject to the tax. When there is a separate, optional contract for maintenance only, the rental or leasing tax will not apply to the gross proceeds derived therefrom.

(b) When a lessor engaged in leasing or renting tangible personal property is required to deliver and pick-up the leased property as part of the leasing or rental contract, the gross proceeds derived therefrom, including the delivery and pick-up charges, will be subject to the tax. A separate agreement for delivery and pick-up services is considered part of the lease agreement and the delivery and pick-up fees are subject to the rental tax. A lessor cannot separate the delivery and pick-up fees as a means to avoid the rental tax.

(c) When a lessor engaged in leasing or renting tangible personal property is required to provide installation or setup services as part of the leasing or rental contract, the gross proceeds derived therefrom, including charges for the installation or setup, will be subject to the tax. When there is a separate, optional agreement for installation or setup of the leased property, the rental tax will not apply to the gross proceeds derived therefrom. (Thyssenkrupp Safeway, Inc. v. State of Alabama (Admin. Law Div. Docket No. S. 08-401, Final Order entered March 18, 2009))

(4) The one and one-half percent recovery fee that may be included in the rental agreement and collected by the lessor on the gross rental receipts from the rental of heavy equipment property under the provisions of Act 2009-583 is not subject to rental tax. The total amount of the recovery fee shall be retained by the lessor for the purpose of paying personal property taxes levied by all taxing jurisdictions against the heavy equipment property. For the purpose of this section, "heavy equipment property" includes self-propelled, self-powered, or pull-type equipment, including farm equipment, that is intended to be used for agricultural, construction, industrial, mining, or forestry uses, and equipment that is described under Industry Code 532412 of the 2002 North American Industry Classification System. To be excluded from the computation of rental tax, the recovery fee must be separately stated. The recovery fee shall not apply to the leasing or renting of heavy equipment to the State of Alabama, any municipality, or any county.

(5) The Court of Civil Appeals in the Steel City Crane Rental, Inc., and Osborne and Company, Inc., decision stated that the lease or rental of cranes with operators did not constitute the leasing of tangible personal property because the lessee did not have possession or control of the cranes and, therefore, the gross proceeds derived therefrom are not subject to the leasing or rental tax. For tax to be due, the lessee must have possession or use of the tangible personal property. The court further stated that it is fundamental to common sense that before a person can exercise possession or use of property, he must have control thereof and the power to exercise dominion over it. Briefly, the arrangement constitutes a contract for the performance of a particular job or jobs and it is not a lease or rental.

(6) If a lessor of tangible personal property other than cranes is operating in the same manner as the taxpayer referred to above, it must be determined if there is a lease of tangible personal property or a contract to do a particular job, before assessing the tax. (§40-12-220/227)

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Authority: §§8-25A-1, 40-2A-7(a)(5), 40-12-220 through 40-12-227 Code of Ala. 1975.
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