



**Revenue Ruling
No. 06- 007
May 16, 2006
Sales and Use Tax**

The Sales Tax Treatment of Collision Damage Waivers

The purpose of this revenue ruling is to clarify the sales tax treatment of purchases of collision damage waivers in the context of automobile lease or rental transactions.

Issue

Is a collision damage waiver (“CDW”), which may be purchased optionally in connection with an automobile rental transaction, subject to sales tax under La. Rev. Stat. §47:302(B)?

Facts

When a customer rents a vehicle from a car or truck rental agency, the customer accepts responsibility for damage to the vehicle rented. Accordingly, if the customer returns the vehicle in a damaged condition, the customer is generally liable for any damages to the vehicle. To avoid this responsibility, the customer is given the option to purchase CDW under the rental contract. If the customer purchases CDW, the rental agency waives its right to recover damages from the customer for physical damage to the rented vehicle, subject to certain exclusions.

This CDW product is optional. In this respect, the customer can rent the same vehicle without CDW coverage and without payment of the separate charge for CDW. CDW is separately offered in the rental contract and is itemized as a separate charge on the rental contract.

Law

La. Rev. Stat. §47:302(B) allows the state to levy a tax upon the gross proceeds derived from the lease or rental of each item or article of tangible personal property within Louisiana. La. Rev. Stat. §47:301(7)(A) defines “lease or rental” as “the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter, for a consideration, without transfer of the title of such property.”

La. Rev. Stat. §22:2091.3(A) defines “[c]ollision damage waiver” as “any contract or contractual provision, whether separate from or a part of a motor vehicle rental agreement, whereby the lessor agrees for a charge, to waive any and all claims against the lessee for any damages to the rental motor vehicle during the term of the rental agreement.” According to La. Rev. Stat. §22:2091.2, “the collision damage waiver portion of the rental agreement...shall not be considered insurance.” Further, La. Rev. Stat. §22:2091.10 provides explicitly as follows:

The rates charged for the collision damage waiver by a licensee under this Part shall be exempt from insurance taxes and insurance taxation *provided that sales taxes in effect in the locale of rental contract issuance are applied, collected, and remitted to the proper tax authority.*¹

¹ Emphasis added.

Analysis

In the facts at hand, there is a taxable lease or rental of a motor vehicle. So, the relevant inquiry is whether or not CDW is part of the “gross proceeds derived from the lease or rental of tangible personal property.” The term “gross proceeds” is not defined in Louisiana statutory law or regulations. The words of a law must be given their generally prevailing meaning.² By determining the common usage of “gross” and “proceeds,” one finds that the common usage of “gross proceeds” is the total amount of money derived from a commercial or fundraising venture, exclusive of deductions.³

The common usage of the term “derive” is to “come from.”⁴ Here, the CDW payment is derived or comes from the lease or rental of tangible personal property in that the lessee’s responsibility for any damages associated with the rental vehicle are necessarily linked to the lease or rental of the automobile. The lessee is not free to vary the terms of the lease or rental agreement that provides that the lessee is responsible for these damages unless the lessee pays an additional fee for the lessor to waive any claims for damages arising from the lessee’s use of the vehicle. In essence, in order for the lessee to modify the terms of the original lease contract as to a certain aspect of the contract, he or she must pay a fee. The fact that CDW is optional does not mean it is not “derived from” the lease or rental transaction.

The lease or rental creates a duty by the lessee to the lessor that did not exist before—a duty to protect the vehicle and the attendant obligation to repair any damages occurring while the vehicle is possessed by the lessee. The enforcement of the duty by the lessee to indemnify the lessor is the object of the waiver created when the lessee purchases CDW. So, the lessee would not have an additional need or desire to contract with the lessor to “waive” the lessor’s right to collect against him unless the lease occurred in the first place.

Furthermore, the lessee cannot purchase CDW from any entity other than the lessor because only the lessor (or a party standing in the shoes of the lessor) can enforce the obligation of the lessee to indemnify for any damage caused by his use of the leased property.⁵ The purchase of CDW necessarily has to arise from a lease or rental contract. Here, CDW derives or comes from the original lease agreement between the lessor and lessee and is part of the gross proceeds derived from the lease or rental of the motor vehicle.

It has been asserted to the Department that *McNamara v. Patterson Services, Inc.*, 382 So 2d 971 (La. App. 1st Cir 1980) stands for the proposition that a rental transaction can incorporate other items that are not subject to sales/use tax and that mere inclusion of such items in a single contractual document does not otherwise cause nontaxable items to become taxable. The Department believes *Patterson* is distinguishable from the case at hand.

In *Patterson*, the Department sought to tax transportation charges on the rental of drilling equipment. In that case, the lease contract specifically provided that the lessee was responsible for the equipment rented while it was out of the possession of the lessor (*Patterson*) and that the lessee would bear all transportation charges. In some instances, the lessor arranged for delivery

² La. C.C. Art 11

³ The American Heritage Dictionary (Second College Edition, 1982) defines “proceeds” as “the amount of money derived from a commercial or fund-raising venture” and defines “gross” as “exclusive of deductions or total.”

⁴ Webster’s Revised Unabridged Dictionary (1913) defines “derive” as “come from.”

⁵ Although some insurance products are available which claim to be “collision damage waivers,” close examination of these policies reveals that they are merely third party insurance contracts and in no way alter the responsibilities of the automobile lessor and lessee as to each other.

and separately billed the lessee for the transportation charges with no additional charge to the lessee for arranging this service. The lessor successfully argued that the Department's regulation at that time was overly broad in that it stated that transportation charges billed to the lessee in connection with a lease were to be included in the amount subject to tax.

In the facts as stated in this ruling, the lessors are compensated for their selling CDW to the lessee, unlike in *Patterson*. Moreover, the CDW is a part of the same rental contract as the lease/rental of the automobile, unlike in *Patterson* where the delivery was billed separately. Third, the nature of CDW necessarily arising from a lease or rental contract is sufficiently different from transportation charges, which could easily be contracted for separately from a lease or rental contract through a third party, to justify a different conclusion than that reached by the court in *Patterson*.

Lastly, unlike in *Patterson*, there is a clear statutory basis for the CDW being taxable as La. Rev. Stat. §22:2091.10 provides that the rates charged for CDW shall be exempt from insurance taxation provided that the sales taxes in effect in the locale of the rental contract issuance are applied, collected, and remitted to the proper tax authority. The plain language of that provision contemplates taxation of CDW as part of a lease or rental transaction, which further supports that CDW is part of the gross proceeds derived from the lease or rental of a motor vehicle.

Ruling

CDW is properly includable as part of the gross proceeds derived from the lease or rental of an automobile because the CDW necessarily arises from the lease or rental of the automobile, can only be contracted for with the lessor of the automobile, and the language of La. Rev. Stat. §22:2091.10 expresses a clear legislative intent that CDW is subject to taxation.

Cynthia Bridges
Secretary

By: Leslie C. Strahan
Attorney
Policy Services Division

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