



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
601 Delaware Avenue
Wilmington, Delaware 19899

TAX NEWSGRAM 76-10

August 31, 1976

Occupational & Business License Taxes
"Commercial Lessors" - Chapter 23, Title 30, Delaware
Code.

Tax Newsgram 76-3, dated July 13, 1976, describes the licensing requirements for "Commercial Lessors" defined in Section 2301 (a) (88), 30 Delaware Code, as added by House Bill No. 1035, 128th General Assembly, Second Session, approved June 30, 1976. This Newsgram sets forth the position of the Division of Revenue with respect to certain additional matters concerning the interpretation and application of this new legislation.

Rental payments received on or after July 1, 1976, by a commercial lessor under any lease of a commercial unit, including leases entered into prior to July 1, 1976, are includible in gross receipts and subject to the tax of 3 mils imposed under Chapter 23, 30 Delaware Code, as amended by House Bill No. 1035. The law provides an exception from the gross receipts tax (but not the licensing requirement) with respect to rentals received by a commercial lessor under a lease on which the realty transfer tax was paid pursuant to Section 5402 (d), 30 Delaware Code. In such cases, the rental payments attributable to the first year of the lease (on which the tax was paid) are to be excluded from gross receipts, however, payments received commencing with the second year of the lease are includible in gross receipts and subject to tax.

A question has been raised as to whether a person licensed as "real estate broker" or "real estate salesman" pursuant to Section 2301 (a) (65) or (66) must also obtain a license as "commercial lessor" pursuant to Section 2301 (a) (88). Real estate brokers or salesmen who operate only as agent or broker for third parties are not required to obtain a commercial lessors license. However, where the real estate broker is the owner of real property which is leased to third parties for his own account (i. e., as lessor) a commercial lessors license would be required and the rental income received from such leases would be subject to the gross receipts tax.



Under the law "gross receipts" of a commercial lessor is defined as "rental payments received for a commercial unit." For this purpose "rental payments" means fixed rental amounts (monthly or annually) specified in the lease, plus any additional rental amounts based on percentage overages required to be paid under the terms of the lease agreement. For example, if a lease provides for the payment of a percentage of the receipts from the operation of a business, in addition to a fixed rental amount, such additional payment would be considered rent.

Persons (individual, corporate or partnership) who are required to obtain a commercial lessor license pursuant to the provisions of House Bill No. 1035, should make prompt application for such license to the Division of Revenue. The first quarterly return on gross receipts for the quarter ending September 30, 1976, is due October 20, 1976. Penalty and interest for late filing will be imposed on license applications received after September 30, 1976, and on quarterly returns received after October 20, 1976.



Louis N. Megargee
Director of Revenue

RRS/mrs

DISTRIBUTION: B AND C