



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
DELAWARE STATE BUILDING
820 N. FRENCH STREET
WILMINGTON, DELAWARE 19801

DIVISION OF REVENUE
TAX RULING 86-1

January 23, 1986

SUBJECT: Applicability of the 2% Use Tax on Lessees

Questions have arisen concerning the applicability of the 2% use tax on lessees where the use of rented personal property occurs wholly or partly without the State of Delaware.

Section 4302, Title 30, Delaware Code, provides, with stated exceptions, that:

"There is imposed by this Section on every lessee a use tax, for use within this State, under a lease of tangible personal property...."

We interpret the foregoing to exclude use without the State to those cases where the lease in question provides specifically for use exclusively without Delaware.

There are conceivable situations where the totality of the circumstances is such that the situs of the proposed use within the State is so much a recognized improbability that such terms are reasonably excluded from the express terms of the contract.

We also interpret the law to not provide for proration of the tax between in-state and out-of-state use. Should the lease not reasonably exclude the possibility of in-state use, then the entire lease payment is subject to the 2% tax.

Should questions arise concerning the application of the foregoing to specific circumstances, your request for a ruling should be directed to the Office of the Deputy Director, Division of Revenue, Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801.

Robert W. Chastant
Director of Revenue

WMR/mrsc