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SALES & USE TAX ALERT

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INSIDE

COLLATERAL ESTOPPEL

Alabama barred from relitigating unconstitutional sales tax exemption

Collateral estoppel barred the Alabama Department of Revenue from relitigating the issue of whether sufficient justification existed to allow a sales tax scheme that the Alabama Supreme Court had previously held to be facially discriminatory against interstate commerce.

In 2006, the Alabama Supreme Court determined that Alabama's policy of imposing Alabama sales tax on sales of products delivered in Alabama to out-of-state governmental entities, while exempting sales of products delivered in Alabama to Alabama state and local governmental entities, violated the federal Commerce Clause. The present case involved the same fundamental issues but concerned different tax years and different sales tax assessments. Collateral estoppel applied because the issue in the present action was identical to the issue litigated in the prior action, the issue was actually litigated in the prior action, the resolution of the issue was necessary to the prior judgment, and the same parties were involved in both actions. The Department argued that the issues were not identical because the cases involved different tax years; however, collateral estoppel applies if the controlling facts and legal rules remain unchanged. The Department also argued that the tax-exemption issue was not actually litigated in the prior case because the Alabama Supreme Court entered a summary judgment against the Department. However, a summary judgment is a conclusive judgment.

Finally, the Department claimed that according to the principles set out in a recent United States Supreme Court decision (*United Haulers Assn., Inc. v. Oneida-Herkimer Solid Waste Management Authority*, 127 S.Ct. 1786 (2007)), the tax scheme did not facially discriminate against interstate commerce. However, *United Haulers* was not directly applicable because it dealt with a flow-control ordinance rather than a tax exemption. Further, the case did not specifically hold that all regulations do not facially discriminate if they treat in-state and out-of-state private entities, and out-of-state public entities, the same. In the absence of a directly contrary United States Supreme Court decision, the court of civil appeals was bound by the Alabama Supreme Court decision holding that the tax scheme was facially discriminatory. (*Alabama Department of Revenue v. Hoover, Inc.*, Alabama Court of Civil Appeals, No. 2060142, Aug. 31, 2007)✦

MACHINERY RENTAL SURCHARGE

Connecticut DOR clarifies rules on rental surcharge

The imposition of the Connecticut rental surcharge on the daily rental of pieces of machinery rented by rental companies is discussed along with legislation that defines "period" for purposes of the surcharge. The 1.5% rental surcharge is imposed on the total amount a rental company charges a lessee for the rental of a piece of machinery in Connecticut for a period of 30 consecutive calendar days or less. For purposes of the surcharge, the period for the term of a machinery rental begins on the date a piece of machinery is rented to a lessee and terminates on the date the piece of machinery is returned to the rental company. If a rental of a piece of machinery is renewed before the machinery is returned to the rental company, the term of the renewal is added to the term of the initial rental to determine the rental period. The rental invoice must separately state the amount of the rental surcharge.

The rental surcharge is added to the total amount the rental company charges the lessee for the rental of the piece of machinery and the 6% Connecticut sales tax must be charged and collected on that sum. If the initial rental of a piece of machinery is for a term of 30 consecutive calendar days or less, and after adding the renewal term to the initial term, the rental period is more than 30 consecutive calendar days, the rental is not subject to the surcharge. In such a situation, the rental company must refund the rental surcharge collected on the initial rental to the customer. The rental company must refund the difference between the amount of sales tax computed on the initial machinery rental and the amount of sales tax recalculated on the initial machinery rental less the surcharge.

Other topics discussed include the filing of returns and payment of the rental surcharge, rentals not subject to the surcharge, and the rental of machinery that may be used for construction, mining, or forestry and is considered the rental of heavy equipment that is subject to the surcharge. This special notice modifies and supersedes *Special Notice 2005(11), Rental Surcharge—Daily Rental of Machinery*, Connecticut Department of Revenue Services, Sept. 30, 2005. *(Policy Statement 2007(3)*, Connecticut Department of Revenue Services, Sept. 12, 2007)✦

ALTERNATIVE FUEL FACILITY

Georgia exempts property used in alternative fuel facility

A Georgia Department of Revenue informational bulletin discusses the temporary exemption from sales and use tax for sales of tangible personal property made to, or used in the construction of, alternative fuel facilities. An "alternative fuel facility" is defined as a facility that is located in Georgia and primarily dedicated to the processing and production of biodiesel, butanol, ethanol, and their

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by-products for sale, when these fuels are derived from biomass materials (i.e., agricultural products), animal fats, or the wastes of these fats or products. "Used in the construction" means tangible personal property that is incorporated into a new alternative fuel facility and that loses its character as tangible personal property.

Contractors and subcontractors who purchase tangible personal property for incorporation into an alternative fuel facility also qualify for the exemption. Purchasers are required to furnish an exemption certificate showing entitlement to the exemption. The bulletin discusses the letter application process for obtaining exemption certificates from the Department and explains how to use the certificates.

Any entity (or person) that qualifies for the exemption must conduct more than 50% of its business with entities or persons with which it has no affiliation. As previously reported (TAXDAY, 2007/05/30, S.7), the exemption applies to qualified sales that occur from July 1, 2007, through June 30, 2012, and does not apply to sales of tangible personal property that occur after production and processing of biodiesel, butanol, ethanol, and their by-products has begun at a facility.

Subscribers to *CCH Tax Research NetWork* may view the bulletin. (*Informational Bulletin SUT-2007-08-28*, Georgia Department of Revenue, Aug. 28, 2007)✦

■ TAXABILITY OF AIRCRAFT

Sales or use tax exemption for aircraft leaving Illinois

An exemption from Illinois retailers' occupation (sales) or use tax is allowed for the sale or purchase of an aircraft that leaves Illinois within 15 days after the later of (1) the issuance of the final billing for the sale or purchase or (2) the authorized approval for return to service, completion of the maintenance record entry, and completion of the test flight and ground test for inspection. The aircraft must not be based or registered in Illinois after the sale or purchase.

Prepurchase Evaluation

An exemption from use tax is allowed for an aircraft that is temporarily located in Illinois for the purpose of a prepurchase evaluation if the aircraft will not be based or registered in Illinois after the prepurchase evaluation.

Post-Sale Customization

An exemption from use tax is allowed for an aircraft that is temporarily located in Illinois for the purpose of a post-sale customization if the aircraft leaves the state within 15 days after the authorized approval for return to service, completion of the maintenance record entry, and completion of the test flight and ground test for inspection. The aircraft must not be based or registered in Illinois before or after the post-sale customization.

Certification of Exemption; Taxable Use; Definitions

A seller claiming a sales tax exemption or a purchaser claiming a use tax exemption must provide a certificate to the Department of Revenue certifying that the requirements for an exemption have been met. The certificate must include the name and address of the purchaser, the address of the location where the aircraft is to be titled or registered, and other information.

If a purchaser makes a taxable use of the aircraft in Illinois, the purchaser must report and pay use tax within 30 days based on the fair market value of the aircraft on the date of the first taxable use.

Definitions are provided for the terms "based in this State," "post-sale customization," "prepurchase evaluation," and "registered in this State."

The five-year sunset provision for tax exemptions does not apply to the above aircraft exemptions. (P.A. 95-304 (*S.B. 455*), Laws 2007, effective July 1, 2007)✦

■ TELECOMMUNICATION AND TELEVISION

New Jersey exempts telecommunication and television equipment

In order for a company to qualify for the New Jersey sales and use tax exemption under N.J.S.A. 54:32B-8.13(c) and (e) for purchased items of apparatus and equipment used in its business of providing cable television program services to subscribers, the machinery, apparatus, and equipment must have been used directly and primarily for receiving or transmitting interactive telecommunications service or for the transmission of television information. Apparatus or equipment not so used would not qualify for the exemption, even if essential or necessary for, or integral to, the operation of a cable television system and service.

Here, the company's purchases of set top boxes were exempt from sales and use tax because they were used directly and primarily in the transmission of cable television signals. Even if basic cable service was available without set top boxes, the boxes functioned only for the purpose of permitting the cable subscriber to receive video on demand, implement parental controls, or receive premium programming from the cable provider. There was no other function for the boxes. Thus, they were used directly and primarily for the transmission of television information and qualified for the exemption. However, the taxpayer's purchases of monitoring devices, pedestal housings, and grade level boxes were not exempt from tax. Further, genuine issues of material fact existed as to whether the company's purchases of power supply units and cable modems qualified for exemption. Thus, the motions for summary judgment as to these items were denied. (*RCN Telecom Service, Inc. v. Director, Division of Taxation*, New Jersey Tax Court, No. 000377-2006, Sept. 10, 2007)✦

■ BAD DEBT

Louisiana Court denies refund of tax to finance company

A sales finance company (taxpayer) was not entitled to a refund of Louisiana sales taxes advanced by the company for motor vehicle credit sales that were ultimately uncollectible and charged off the company's federal tax returns as bad debts. The taxpayer made no retail sales to the consumers whose credit accounts it purchased. Neither it nor the dealerships had a statutory obligation to collect the motor vehicle sales tax or to account for the tax to the Louisiana Department of Revenue, and as a consequence, the taxpayer was not entitled to a refund under the bad debt statute.

Motor vehicle credit sales

At issue were numerous motor vehicle credit sales and the sales taxes paid on the taxpayer's purchases of motor vehicle installment sales contracts. The taxpayer made none of the sales, rather, the sales were made pursuant to installment sales contracts entered between customers and various automotive dealerships. Under the terms of the contracts, the customers agreed to repay all or part of the purchase price, including a pro rata portion of sales tax, on an installment basis. After the contracts were signed, the dealerships would assign all of the dealership's rights under the terms of the installment contracts to the taxpayer without recourse.

Bad debt

In exchange for the assignments, the taxpayer paid the dealerships the full amount financed under the contracts including the full amount of sales tax due. From this sum the dealerships remitted the sales tax due on the sales of the vehicles to the vehicle commissioner. After the installment contracts were assigned to the taxpayer, the customers made payments directly to it and if a customer defaulted on the contract, the vehicle was repossessed and sold with the proceeds from the sale applied to the outstanding debt. The remaining unpaid balance, including a pro rata amount of the financed sales tax, was written off by the taxpayer for accounting and federal income tax purposes.

State law

A Louisiana statute provides for reimbursement of sales tax previously paid by the dealer whenever the unpaid balance on an account due to the dealer on the purchase of tangible personal property has been found to be bad in accordance with Internal Revenue Code Section 166 and the amount actually has been charged off for federal income tax purposes. "Dealer," for purposes of the statute, is defined as every person who sells at retail tangible personal property, and "person" includes an individual, firm, copartnership, joint adventure or corporation. Neither definition includes an assignee.

Taxpayer was not a dealer for all transactions

The state statute provides that, prior to its application, there must exist an unpaid balance of an account due to the dealer for the purchase of tangible personal property. Although the taxpayer may be a registered Louisiana dealer for certain transactions (i.e., the sale of off-lease motor vehicles), that does not necessarily make it the dealer for all transactions or for the transactions it financed. The taxpayer made no retail sales to the buyers whose credit accounts it purchased and its federal income tax returns listed zero for its gross receipts or sales. Moreover, Schedule K of those same returns listed the taxpayer's business activity as "sales finance" and its products or service as "financial products." Under the statute, reimbursement is limited to the tax previously paid by the dealer. The taxpayer did not submit the motor vehicle sales tax to the vehicle commissioner. Rather, the dealerships remitted the sales tax due on the sales of the vehicles to the vehicle commissioner on behalf of their customers.

Full recourse

In addition, although regulations recognize that the right to seek a refund may be transferred or assigned to a lending institution, no refund is authorized on bad debts arising on sales financed by lending institutions unless the lender has full recourse against the seller for any unpaid amounts. The installment contracts at issue were assigned to the taxpayer without recourse, which under the regulation, made the taxpayer ineligible to receive a refund.

Assignee acquires no greater rights than assignor

However, of greater significance to the court of appeals was that, for motor vehicle sales, the dealer has no statutory obligation to collect the sales tax from the buyer. Sales tax due on vehicles subject to the vehicle registration license tax is to be paid directly by the purchaser to the vehicle commissioner as the agent of the collector of revenue. A buyer cannot contractually assign the legislative obligation to collect and remit sales taxes on motor vehicles to a third party. While it was undisputed that the taxpayer was the source of funds used to pay the sales tax due on the motor vehicle sales and that the dealerships remitted the taxes to the vehicle commissioner on behalf of their customers, neither the taxpayer nor the dealerships had a statutory obligation to pay the taxes. The dealerships could not transfer to the taxpayer a statutory obligation and a related statutory benefit that they did not have because an assignee acquires no greater rights than its assignor. The taxpayer made no retail sales to the consumers whose credit accounts it purchased. Neither it nor the dealerships had a statutory obligation to collect the motor vehicle sales tax or to account for the tax to the Department, and as such, the taxpayer was not entitled to a refund under the bad debt statute. (*DaimlerChrysler Services of North America, LLC v. Secretary, Department of Revenue*, Louisiana Appellate Court, First Circuit, Nos. 2007 CA 0010, 2007 CA 0011, Sept. 14, 2007) ✦

■ PAYMENT EXTENSION TO FLOOD VICTIMS

Minnesota DOR extends deadline for flood victims

The Minnesota Department of Revenue will allow tax filing and payment extensions without penalty or interest for individuals and businesses in Dodge, Fillmore, Houston, Olmsted, Steele, Wabasha, and Winona counties that were affected by floods following the heavy rain on Aug. 18 and 19. The relief applies to individuals or businesses whose tax returns or payments were due after Aug. 19, 2007, and through Nov. 15, 2007, but were delayed because of the flooding.

The filing and payment provisions apply to the following taxes and fees: corporate franchise income; personal income; sales and use; partnership, personal income tax withholding; MinnesotaCare; motor fuel; cigarette and tobacco products; alcohol beverage; solid waste management; gambling; insurance; and dry cleaner fees.

Taxpayers who file and pay by Dec. 31, 2007, and are assessed penalties or interest for filing or paying late should request an abatement of penalty and interest in writing from the Minnesota Department of Revenue, P.O. Box 64447—FLD, St. Paul, MN 55164-0447.

Personal income taxpayers also may be eligible to claim casualty losses on their 2006 or 2007 federal individual income tax returns, which will carry over to their Minnesota tax returns, and may qualify for county property tax relief. The Department's notice may be viewed in its entirety at *www.taxes.state.mn.us/taxes/publications/press_releases/content/2007_flood_083007.shtml*.(*Press Release*, Minnesota Department of Revenue, Aug. 30, 2007)✦

■ SALES AND USE TAX

New Missouri sales and use tax rules

The Missouri Department of Revenue has issued numerous new sales and use tax rules and amended others, all on an emergency basis, in order to conform to statutory changes made by previously enacted legislation (S.B. 30, Laws 2007) (TAXDAY, 2007/06/18, S. 15).

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STATE UPDATES

CALIFORNIA

The California State Board of Equalization has updated its publication that provides guidance to California retailers who sell or lease covered electronic devices to California customers and are therefore liable for the electronic waste recycling fee. The updated publication specifies that effective July 1, 2007, the fee must be collected on portable DVD players with liquid crystal display (LCD) screens. Retailers who collect the fee from their customers are required to provide their customers with an invoice or similar document that shows the fee as a separate item and indicates that the fee has been paid in full. The retailer must retain a copy of the invoice or document for the retailer's records. The updated publication also clarifies that certain retailers are required to pay the fee by electronic funds transfer. *(SBE Publication 95, Electronic Waste Recycling Fee, California State Board of Equalization, Aug. 2007)*

COLORADO

A Department of Revenue publication discusses the exemption from Colorado sales and use tax for purchases of renewable energy electricity production machinery and parts. Effective May 23, 2007, the manufacturing equipment exemption was expanded to include machinery and machine tools, or parts for such machinery, used in the production of electricity from a renewable energy source, including but not limited to wind. *(FYI Sales 10, Colorado Department of Revenue, Aug. 2007)*

ILLINOIS

An exemption from Illinois retailers' occupation (sales) tax, use tax, service occupation tax and service use tax has been enacted for tangible personal property used in the construction or maintenance of a community water supply that is operated by a not-for-profit corporation that holds a valid water supply permit issued under Title IV of the Environmental Protection Act. This exemption is not subject to the general five-year sunset provision for tax exemptions. (P.A. 95-538 (S.B. 1360), Laws 2007, effective Jan. 1, 2008)

The statute authorizing the imposition of an Illinois county sales tax for public safety or transportation purposes has been amended to revise the language that must appear in the proposition and ballot proposal for such a tax. For instance, the ballot language must state how much additional sales tax must be paid by a consumer for each $100 in retail purchases if the proposed tax is approved. In addition, the law authorizes a county to opt to establish a sunset provision for the tax. (P.A. 95-474 (S.B. 345), Laws 2007, effective Jan. 1, 2008)

INDIANA

An updated publication issued by the Indiana Department of Revenue discusses the sales tax deduction for ethanol fuel (E85) dispensed through metered pumps for retail sale. (Information Bulletin #71, July 2007)

The Indiana Department of Revenue has issued an updated publication discussing the sales tax exemption provided for consumable items purchased by people engaged in the business of renting or furnishing rooms, lodgings or accommodations. Exempt items include complimentary toiletry items such as soap, shampoo, tissue paper, plastic cups and any other items that are not reusable. (Information Bulletin #66, July 2007)

KANSAS

Effective July 1, 2007, charges for delivery of direct mail are not subject to the Kansas sales or compensating use tax when the delivery charges are separately stated on the invoice. This is an exception to the general rule that requires sales or use tax to be paid on delivery charges. For these purposes, "direct mail" means printed material delivered or distributed by U.S. mail or other delivery services to a mass audience or to addressees on a mailing list provided by the purchaser at the direction of the purchaser when the cost of the items is not billed directly to the recipients. (Notice 07-06, Kansas Department of Revenue, July 27, 2007)

LOUISIANA

Effective July 1, 2008, a Louisiana sales and use tax exclusion is available for machinery and equipment, as defined, purchased by a utility regulated by the Public Service Commission or the New Orleans council. Such a "utility" is defined, for purposes of the exclusion, as a person who is assigned a North American Industrial Classification System (NAICS) Code 22111, Electric Power Generation, as it existed in 2002. Also, political subdivisions whose boundaries are not coterminous with those of the state may grant the same exclusion from their local sales and use taxes to such utilities. (Act 427 (H.B. 170), Laws 2007, effective as noted above)

The determination of whether occupancy is transient or permanent, for purposes of the Louisiana sales tax imposed on the occupancy of hotel rooms, is not determined by the amount of time spent at a location or the method of payment, but rather, the character of use. The distinction between a transient accommodation and a permanent home use is the fact that a permanent occupant uses a hotel as a home and not merely as a place to sleep. The length of time of use and method of payment are essential elements of one who is a permanent resident, but in and of themselves do not establish the permanency of the use. If the use is that of a hotel, then the character of the use is transient and the use is taxable. However, if the purpose of the use is that of a permanent residence, then the user is considered permanent. Several requirements must be met in order to establish the character of the use as that of a permanent residence or home including: physical presence, long-term use, the contractual nature of the arrangement and the permanency of the habitation. Only the use of a hotel as a permanent residence or home by a natural person is excluded from the imposition of sales tax. (Revenue Ruling No. 07-003, Louisiana Department of Revenue, Sept. 6, 2007)

MISSOURI

For purposes of qualifying for the Missouri state and local sales tax exemption for electricity used in the primary manufacturing of automobiles, a rebuttable presumption has been created that raw materials used during the primary manufacturing of automobiles contain at least 25% recovered materials. (H.B. 1, First Special Session, Laws 2007, effective Sept. 4, 2007; Press Release, Missouri Governor Matt Blunt, Sept. 4, 2007)

NEBRASKA

Governor Dave Heineman has unveiled restructuring plans for the Nebraska Department of Revenue. L.B. 334 provides for the merger of the Department of Property Assessment and Taxation with the Department of Revenue. The newly merged Department of Revenue will consist of six divisions: Policy, which will focus on policy development, economic research, taxpayer education and communications; Enforcement, which will combine the efforts of legal process, audit compliance and other collection activities; Operations, which will include tax processing operations, information technology, finance, budget, personnel and related services; Property Assessment; Motor Fuels; and Lottery and Charitable Gambling. (Release, Office of the Governor, Dave Heineman, July 23, 2007)

NEW JERSEY

The New Jersey Division of Taxation has issued a notice that identifies the entities that are exempt from sales and use tax

STATE UPDATES

on purchases of natural gas, electricity and related transportation and transmission service. The notice also provides examples of invalid claims of exemption. Specifically, the Division notes that the exemptions for sales of tangible personal property used in manufacturing, processing, assembling and refining or in research and development exclude sales of energy and utility service, and that neither exempt organizations nor Urban Enterprise Zone businesses are exempt from paying sales tax on their purchases of energy or utility service. Further, the direct payment certificates that are issued by the Division are not valid for purchases of energy or utility service. (Notice—Natural Gas and Electricity Sales and Use Tax Exemption, New Jersey Division of Taxation, July 26, 2007)

NEW YORK

The New York Division of Taxation failed to properly determine additional sales and use taxes due from a restaurant and its president. Even though the Division was warranted in using an estimated audit methodology and justified in using the utility expense ratio to determine an error rate and additional gross sales, it went beyond the "considerable latitude" granted to it in its methodology when it chose the median quartile for purposes of the utility ratio. The Division failed to demonstrate that it had a policy for assigning particular taxpayers specific quartiles, and the auditor's concession at hearing that he believed western New York had some of the highest utility rates in the country underscored the irrationality of choosing the median quartile, when it was apparent that the upper quartile was clearly more accurate. The auditor's speculation that the median was fair lent no credence to the Division's choice of that ratio and belied his knowledge of the actual climatological circumstances facing the taxpayer's business in Buffalo, New York. As such, this portion of the generally accepted utility ratio estimated methodology was not properly applied and was not reasonable. The Division was directed to recalculate additional sales tax due for the revised audit period using the upper quartile figure. In addition, the taxpayer failed to present any evidence or argument warranting the waiver of the penalties asserted. (Lam, New York Division of Tax Appeals, Small Claims, DTA No. 820982, Aug. 9, 2007)

NORTH CAROLINA

Recently enacted legislation mandates the inclusion of a clawback provision in all economic incentive agreements, including agreements governing a business's local property and sales and use taxes, that are entered into between private enterprises and a city or county. A clawback provision requires that economic incentives must be repaid or forfeited if the recipient business does not fulfill its responsibilities under the incentive law, contract, or both. Economic development agreements between a private enterprise and a city or county must include a clawback provision that requires the recapture of sums appropriated or expended by the city or county upon the occurrence of events specified in the agreement. Events that would require the city or county to recapture funds would include the creation of fewer jobs than specified in the agreement, a lower capital investment than specified in the agreement, and a failure to maintain operations at a specified level for a period of time specified in the agreement. Furthermore, the North Carolina Department of Commerce is required to catalog all statutory, regulatory or contractual clawbacks in the state and federal programs it administers. The catalog must include a description of each clawback, the program to which it applies and a citation to its source. The catalog must be published on the Department's Web site and must be updated every six months. (Ch. 515 (H.B. 1595), Laws 2007, effective Aug. 30, 2007)

TENNESSEE

Tennessee has submitted a petition to the Streamlined Sales and Use Tax (SST) Governing Board that would continue its associate membership until July 1, 2009, when it would become a full member. Currently, Tennessee is an associate member. However, under the terms of the Agreement, Tennessee's current associate membership will expire on December 31, 2007, because it will not be in full compliance with the Agreement by that date. The state recently delayed its previously enacted conformity provisions. (TAXDAY, 2007/07/06, S.26) Under current law, most of the provisions will become effective July 1, 2008, but full conformity will not be in place until July 1, 2009.

Tennessee's petition seeks to take advantage of an amendment to the Agreement that the Board adopted at its most recent meeting. (TAXDAY, 2007/06/26, S.1) Under this amendment, a state may now petition for membership up to 18 months prior to the date it will be in full compliance. If the petition is approved, the state will be an associate member during the interim before full compliance. Therefore, if Tennessee's petition is approved, the state will continue as an associate member until July 1, 2009, when it will automatically become a full member, assuming it does not further delay its conforming changes. If it does enact a further delay, it will forfeit its associate membership and must wait a year before repetitioning for membership.

The petition is expected to be voted on during the Board's upcoming meeting September 19-20, 2007, in Kansas City, Kansas. The petition and its supporting documentation can be found at www.streamlinedsalestax.org. (Petition for Membership, Tennessee Department of Revenue, filed Aug. 17, 2007)

TEXAS

The Texas Comptroller has issued a clarification regarding the effective date for the repeal of the 1.25% telecommunications infrastructure fund (TIF). H.B. 735, enacted in 2007, repealed the TIF assessment, but caused some confusion about when the repeal was effective by identifying two different dates. The bill repealed the TIF enabling provision, which is Utility Code, Subchapter C, Chapter 57, effective October 1, 2007; however, the bill itself does not become effective until September 1, 2008. Thus, the TIF assessment will end in 2008 and not in 2007. (Tax Policy News, Vol. XVII, Issue 8, Texas Comptroller of Public Accounts, Aug. 2007)

Replacement parts for dragline machines used in coal surface mining did not qualify for exemption from Texas sales and use tax as property used in manufacturing because draglines do not directly make or cause a chemical or physical change to marketable coal and because surface mining is not a stage in the actual manufacturing of marketable coal. The draglines were used to remove dirt and rock (overburden) in order to expose underground coal for mining by bulldozers. Although the removal of the overburden caused the coal to dry and water to escape, resulting in micro-fracturing and brittleness, the court held that the direct cause of these physical and chemical changes was the air and that the draglines were merely an indirect cause. (Sabine Mining Company v. Strayhorn, Texas Court of Appeals, 13th District, No. 13-06-330-CV, Aug. 23, 2007)

Missouri *(Continued from page 5)*

- **Photographers, photofinishers, and photoengravers.** New rule 12 CSR 10-103.381 explains the exemption for items used or consumed by photographers, photofinishers, and photoengravers. Supplies such as film, chemicals, and other materials purchased for the photographer's use or consumption are exempt from state sales tax and local use tax, but not local sales tax.
- **Vending machine sales.** The amendment to rule 12 CSR 10-103.400 provides that purchases of machines or parts for machines used in a commercial vending machine business are not subject to tax if tax is paid on the gross receipts derived from the sale of the tangible personal property through the vending machines.
- **Ingredient or component part exemption.** The amendment to rule 12 CSR 10-110.200, regarding the ingredient or component part exemption, provides that materials consumed in the manufacturing, processing, compounding, mining, producing, or fabricating of products intended to be sold ultimately for final use or consumption are exempt from tax.
- **Machinery and equipment exemption.** New rule 12 CSR 10-111.011 explains what elements must be met in order to qualify for the exemption for machinery, equipment, materials, and chemicals used or consumed in manufacturing, processing, compounding, mining, or producing any product, or used in research and development related to manufacturing, processing, compounding, mining, or producing any product.
- **Items used or consumed in material recovery processing.** New rule 12 CSR 10-111.061 explains the elements that must be met in order to qualify for the exemption for purchases of machinery, equipment, materials, and chemicals used or consumed in the processing of recovered materials.
- **Television and radio broadcasters.** New rule 12 CSR 10-110.210 explains the exemption for television and radio broadcasters. Generally, radio and television broadcasters are exempt from tax (state and local) on purchases of utilities, machinery, and equipment used or consumed directly in the broadcasting of their programs.
- **Common carriers.** The amendments to rule 12 CSR 10-110.300, among other things, remove the "solely in interstate commerce" requirement for the exemption for motor vehicles used by common carriers.
- **Commercial printers.** New rule 12 CSR 10-111.101 explains the tax rules for commercial printers and what elements must be met in order to qualify for the exemption for items used or consumed by them.
- **Electrical energy.** New rule 12 CSR 10-110.601 explains the application of the exemption for electricity, gas (natural, artificial, or propane), water, coal, and energy sources used or consumed in manufacturing, processing, compounding, mining, or producing any product, or used or consumed in the processing of recovered materials, or used in research and development related to manufacturing, processing, compounding, mining, or producing any product. It also explains how a taxpayer may claim the exemption at the time of purchase of the utilities, energy and water.
- **Contractors.** The amendment to rule 12 CSR 10-112.010 clarifies the exemption for contractors as it relates to fuel and it adds specific exempt entities.
- **Taxable gross receipts.** The amendment to rule 12 CSR 10-103.555 addresses the application of tax involving third parties and provides guidance for reporting gross receipts.

The text of the rules can be found on the Department's Web site at *www.sos.mo.gov/adrules/Emergencies%20for%20Internet/emergency.asp*. (*Reg. Secs. 12 CSR 10-103.380, 12 CSR 10-103.381, 12 CSR 10-103.400, 12 CSR 10-103.555, 12 CSR 10-110.200, 12 CSR 10-110.201, 12 CSR 10-110.210, 12 CSR 10-110.300, 12 CSR 10-110.600, 12 CSR 10-110.601, 12 CSR 10-111.011, 12 CSR 10-111.061, 12 CSR 10-111.100, 12 CSR 10-111.101, and 12 CSR 10-112.010*, Missouri Department of Revenue, effective Aug. 28, 2007, expire Feb. 23, 2008)✦