Mr. Joseph Manarolle May 1, 1974

Glenn L. Rigby

Pursuant to your request I have reviewed the provisions of the lease contracts of regarding "late payment charges". This charge can best be illustrated by way of example:

> X contracts to lease tangible personal property from Y for $100 per month for 24 months. The rental payments are due and payable on the first of each month. If X does not pay the monthly payment on the first, a lump-sum charge or a percentage charge is added as a penalty for failure to pay the $100 on time.

To my way of thinking this additional payment is not made for the use of the property and should not be regarded as part of the taxable rental receipts. This additional charge is simply for failing to pay the rental payment on time. Since we don't charge tax on interest payments on outstanding balances on conditional sales contracts, it is my opinion that we should not attempt to charge tax on this late charge. I recognize that this conclusion seems to be inconsistent with the statement contained in annotation 330.0840. However, in reviewing the back-up material regarding this annotation it is clear that that annotation is concerned with a penalty that is charged for an early termination. I view that type of charge as an adjustment to the monthly rental. Of course, such an adjustment is properly includable in the taxable rentals.

See now 330.3307 for annotation covering same point.