



U.S. GENERAL SERVICES ADMINISTRATION
Public Buildings Service

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PXO-97-03

MEMORANDUM FOR ALL REAL PROPERTY LEASING ACTIVITIES
(PXO DISTRIBUTION LIST)

FROM:

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SPACE ACQUISITION ADVOCATE (PXO)

SUBJECT: Tax Payments and the Timeliness of Lessor Tax Documentation

1. Purpose. This acquisition letter clarifies existing policy regarding payment of tax adjustment claims under the terms of GSA real property leases.
2. Background.

The GSA Board of Contract Appeals (GSBCA) ruled in *Riggs National Bank of Washington, D.C. v. General Services Administration*, GSBCA No. 14061, 97-1 BCA 28,920 (1997), that GSA was not liable for tax adjustment claims under a GSA real property lease where 1) the lessor failed to submit required tax documentation within the time period required by the lease, *and* 2) the lease provisions clearly conveyed that the consequences of this failure would be that the Government would not be liable for payment of the tax adjustment.
3. Effective Date/Expiration Date. These instructions are effective upon receipt in real estate activities and remain in effect from the date of issuance unless canceled.
4. Cancellation. None.
5. Applicability. All real property leasing activities.
6. Instructions/Procedures.

GSA's current standard clause, which provides as follows, meets these requirements:

The Government shall make annual lump sum payments to cover its share of increases in real estate taxes over taxes paid for the calendar year in which its lease commences (base year). The amount of payment shall be based upon the submission of proper invoice, including paid tax receipts/statements/bills, from the Lessor to the Contracting Officer. The due date for making payment shall be the 30th day after receipt of the invoice by the Contracting Officer or the 30th day after the anniversary date of the lease, whichever is later. If the invoice submitted does not meet the requirements of a proper invoice, it will be returned to the Lessor within 7 days of receipt. **The Government will be responsible for payment only if the receipts are submitted within 60 calendar days of the date the tax payment is due.** If no

full tax assessment is made during the calendar year in which the Government lease commences, the base year will be the first year of a full assessment.

Another example of a lease provision that meets these requirements is:

To be eligible for a rental adjustment under this clause, the lessor must submit copies of paid tax receipts within 60 days from when taxes are due and payable. Failure to submit the request on a timely basis will constitute a waiver by the lessor of his rights to a tax adjustment for the specific year in which the rental adjustment would otherwise apply.

The lessor may be entitled to a tax adjustment if the provisions in a particular lease do not explicitly provide notice that failure to submit the required documentation within the specified time period relieves the Government of liability to pay the tax adjustment.

Based on the foregoing considerations, GSA should stop paying tax adjustment requests that are not submitted in accordance with the time limits specified in the tax adjustment clause, where the lease provisions meet the conditions specified above.

Regional offices should immediately begin to de-obligate funds previously accrued in the accounting system for paying untimely tax adjustment requests that meet the conditions above. The Office of General Counsel, Real Property Division (LR), concurs in this guidance.

I highly recommend that you consult with your Office of Regional Counsel prior to making any final determinations concerning GSA's legal obligation to pay a tax adjustment under the terms of a non-standard GSA tax clause.