



OCT 23 2007

RSL-2007- 09

MEMORANDUM FOR ASSISTANT REGIONAL ADMINISTRATORS, PBS
REGIONAL REALTY SERVICES OFFICERS

THRU: ANTHONY E. COSTA
DEPUTY COMMISSIONER – PD

FROM: SAMUEL J. MORRIS, III
ACTING ASSISTANT COMMISSIONER FOR OFFICE OF
REAL ESTATE ACQUISITION – PQC

SUBJECT: Tax Adjustment Clause Enforcement

1. Purpose. This Realty Services Letter (RSL) is to remind regional officials to enforce the lease requirement that lessors submit a proper invoice and evidence of payment of taxes within 60 calendar days of tax due date, or waive their right to that escalation money.

2. Background.

- a. An internal review of GSA's finances found that the processing of late tax payments had created problems for GSA and the crossing of fiscal years may make it impossible to recover the money from the tenant agencies. In addition, GSA associates are behaving inconsistently, some rigidly following the 60-day rule and others violating it. That creates problems for their lessors who are never sure how GSA will respond to their requests, and causes conflict with a tenant agency that sees one GSA region paying the past due tax escalations and another region enforcing the clause.
- b. On August 26, 1997, PBS issued RSL 97-03, *Tax Payment and Timeliness of Lessor Tax Documentation*. The RSL advised that a GSBCA case held 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."
- c. The RSL stated that "GSA's current standard clause provides language that meets this requirement."
- d. The RSL also stated:
"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."

3. Effective Date/Expiration Date. This RSL and instructions are effective 30 days after the date of signature and will expire 12 months from the date of issuance unless modified, cancelled, or reissued earlier.
4. Cancellation. None.
5. Applicability. This RSL applies to all real property leasing activities.
6. Instructions/Procedures.
 - a. Except as provided in paragraph c below, regional officials must not make payments to lessors when they submit their tax receipt and invoices more than 60 calendar days after the date the tax payment is due from the lessor to the taxing authority.
 - b. If regional officials can determine that in the past 2 years a "late" payment has been made, then a regional official must notify the lessor by letter that the lease clause will be rigidly enforced for future tax increases.
 - c. If an invoice and/or tax receipts are received more than 60 days after the tax late payment due date, the lessor has been paid after the 60-day period in the past, and the lessor has not been notified of our intention to enforce this provision, regional officials must –
 - i. Consult with the Regional Counsel's office,
 - ii. With Counsel's concurrence, submit an exception report to the Rent Bill Management Office to make the late payment and to bill the agency, and
 - iii. The exception request must be accompanied by a letter to the lessor indicating that we will not honor late requests for payment in the future.