



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.

SAMPLE LETTER TO EXISTING LESSORS

[Date]

[Name]

[Company]

[Address]

RE: Return of tax reimbursement invoice

Dear [Name]:

On (Date , 200), we received the copies of your real estate tax receipts and/or your invoice for the increase in real estate taxes over your base year (your Account #) for the year 20 (current year) for the property located at (address) , leased under #GS-XXB- . We did not receive your (invoice, tax receipts, or base year tax receipts Choose appropriate option), within the 60 days after the tax payment is due from the lessor to the taxing authority as required in the lease; we are hereby returning the invoice and no payment will be processed.

The tax adjustment clause of your lease contract requires the submission of paid tax receipts for each year of the lease, beginning with the base year. It specifically states "**The Government shall be responsible for payment of any tax increase over the base year taxes only if the proper invoice and evidence of payment is submitted by the Lessor within sixty calendar days after the tax payment is due from the Lessor to the taxing authority.**" (confirm exact language in lease) "Proper invoice and evidence of payment" includes current year real estate tax invoice or invoices that must be submitted showing the assessed value, tax rate, property location, discount, etc. Attached to the current year's tax invoice must be the taxing authority's invoice or invoices for the contract base year. Submission of statements identifying amounts, without the proper documentation and taxing identification as listed above, is insufficient.

In addition to submission of a copy of the actual tax invoice, a proof of payment must accompany each request. You are still required, however, to submit all prior years' tax invoices, if you have not already done so, even though you would not be eligible for reimbursement for those years.

The General Services Administration applies this clause strictly and no longer waives any request from the 60-day provision. Please be advised that we will not be taking any reimbursement action on this invoice. In the future, please ensure timely submission of claims for tax reimbursement. If you have any further questions, please feel free to contact me on () .

Thank you for your cooperation.

Sincerely,

NAME
TITLE
MAIL DROP
ADDRESS
CITY STATE ZIP

Enclosure