

**Public Comment and Testimony
Equipment Leasing & Finance Association
Proposed Rules 86 Ill. Adm. Code 220**

The Equipment Leasing and Finance Association (ELFA) represents financial services companies and manufacturers in the commercial equipment lease finance sector. Many of our members have locations or equipment located in the state of Illinois that are subject to various types of leasing arrangements. We are concerned that the proposed sourcing rules do not provide certainty for retailers and lessors, leaving them at risk with their customers and open to audit and litigation. ELFA members are specifically concerned regarding the lack of guidance on how to source receipts from conditional sales type leases. We submit these comments and recommendations to offer some insight into our industry, along with potential remedies that may mitigate these concerns.

Recommendations

We suggest inserting the following provision into the proposed rules to address our concerns:

**Equipment Lessors Acting as a Lender
and not as a Buyer and Seller of Goods**

When a third party finance source, not acting as a buyer and a seller, enters into an agreement defined as a “Security interest” under Section 1-203 of the Illinois Commercial Code [810 ILCS 5], the transaction shall be considered a finance arrangement and the third party finance source shall not be considered a seller. The transaction shall be sourced to the jurisdiction where the supplier is engaged in the business of selling as determined under this Rule. Neither the physical location of goods securing the finance nor the activities of equipment lessor/lender will be considered in this situation.

A third party finance source is not acting as a buyer and seller when:

- They pay a supplier’s invoice issued in the name of the customer,
- They pay a supplier’s invoice issued in the name of the customer and sent in c/o the finance source,
- They take an assignment of the supplier’s invoice issued in the name of customer and assume the obligation to pay and the right to take security title or security interest, or
- They provide a statement to the customer that they are a third party finance source and intend to act as a secured party and not a buyer and seller.

Notwithstanding the foregoing, a third party finance source, that is registered to collect Illinois Use Tax, may volunteer to collect and remit directly to the Department of Revenue, the applicable Illinois state use tax due from the customer and not collected by supplier.

Equipment Lessors Acting as a Buyer and a Seller of Goods

When a third party finance source acts as a buyer and a seller, entering into a lease agreement that is considered a conditional sale, the third party finance source will be considered a lessor/retailer. The lease receipts will be sourced based on where the greatest government benefits and protections are received during the retailing relationship of the lessor-lessee, which is the physical location of goods over the life of the agreement.

A third party finance source is acting as a buyer and seller when:

- They issue a purchase order to the supplier that rescinds the customer's original purchase order, or take an assignment of the customer's original purchase order,
- They require the supplier to 1) issue the invoice directly in the name of the finance source, and 2) require the supplier to pass full title and ownership to the finance source, and
- They issue a unit or blanket exemption claim of resale to the supplier.

We appreciate your consideration and the opportunity to provide comments on this issue. If you have any questions or would like to discuss further, please contact me directly.

Sincerely,



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About ELFA and its Members

ELFA represents more than 575 member companies doing business in all 50 states. These include many of the nation's largest services companies and manufacturers, as well as, regional community banks, and small finance companies. ELFA Members include:

- Independent leasing and finance companies
- Broker and packagers
- Captive finance companies
- Investment banks
- Commercial banks
- Service providers
- Diversified financial services companies

The clients, suppliers and customers of ELFA members range from Fortune 100 companies to small and medium sized enterprises to governments and non-profit.

About the Commercial Leasing Industry

The leasing industry is not like the traditional main street retail industry in Illinois. Specifically, the leasing industry is comprised of financial institutions and different types of banks. Further, they often do not have a physical equipment retail location. ELFA's member companies arrange for the financing of the equipment, do not have physical possession of equipment prior to a lease and must often rely on equipment descriptions and information contained in supplier invoices. Some of ELFA's wide array of members have manufacturing parent companies in one state, while their financing arm is located somewhere entirely different. This leasing and financing is specifically concerned with Business to Business (B2B) financing, does not make arrangements with individuals and is not in the consumer financing marketplace.

After the lessee has selected a supplier and the equipment it desires to purchase, the lessor will step in and purchase the equipment under its resale exemption. The lessor then sells it to the lessee under a conditional sale agreement wherein it is certain the lessee will become the owner upon completion of all payments. The lessor holds the title to the equipment until the lessee has completed all of the agreed upon payments, at which time title vests to the lessee. As a general rule, leases with a nominal or mandatory end of lease purchase option are treated as conditional sales in the state of Illinois; taxed on the lease receipts as received. The proposed rules are lacking guidance on how to source the receipts from conditional sales type leases.

Retailing activities associated with conditional sale type leases, as demonstrated above, are significantly different than traditional brick and mortar retailing activity. Most of the mainstream B2B retailing activity associated with equipment selection occurs prior to a point when the customer decides whether to purchase or to lease. Third party lessors (many of ELFA's members) are brought into the retail transaction after the customer has selected the equipment and the supplier of same. At that point, credit review and credit approval become the most significant activity in pricing and approving a customer's choice of financing under conditional sales type leases.

Sourcing when Equipment Lessors Act as a Buyer and Seller of Goods under a Conditional Sale Type Lease

For goods that are paid for over time under a conditional sale type lease agreement, sourcing should be based on the physical location of goods securing the payment. Keeping in line with the legislative intent, the physical location of these goods over the life of the lease agreement enjoys the greater part of governmental protection and benefits related to the retailing activities of the lessor and the lessor-lessee relationship for that lease transaction.

Since sourcing the sales must be based on a fact intensive approach that looks at the lessor's "composite of selling activities", the lessor's location would *only* be the driver when the lessor's retailing activities to secure the lease happen entirely at a single location. In scenarios where the lessor's retailing activities happen in multiple locations, the physical location of the goods securing the payment will be given the greatest relevance to the lessor's retailing activities surrounding the transaction. This sourcing answer provides the simplest way to manage complex retailing activities that could involve multiple parties and a magnitude of in-state and out-of-state activities making it near impossible to identify a single location where the predominant retail activities occur. Once again, the physical location of goods over the life of the agreement generated during the lessor-lessee retailing relationship enjoys the greater part of governmental protection and benefits.

Sourcing when Equipment Lessors Act as a Lender and not as a Buyer and Seller of Goods

For those transactions where the equipment lease and finance companies act as a lender, and not as a buyer and seller, we suggest the rules look back to the supplier and its retailing activities to determine correct location for sourcing the transaction. In these instances, the lease documents are in reality just a loan, or in substance, just a pure finance arrangement.

ELFA Contact Information for Further Inquiries

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