



December 27, 2013

Commissioner Angela Rodell  
Alaska Department of Revenue  
P.O. Box 110400  
Juneau, AK 99811-0400

Re: Application of Tourist Vehicle Rental Tax to Delta Leasing, LLC

Commissioner Rodell:

We are writing to you in my capacity as president of Delta Leasing, LLC. An Alaskan-owned business with offices in Anchorage and Deadhorse, Delta Leasing has focused on leasing industrial equipment to construction contractors, mining companies, oilfield operators and associated industrial service providers. While much of Delta Leasing's income is earned by leasing equipment such as loaders, forklifts, man-lifts, generators, portable offices and other industrial equipment to customers working on the North Slope, the company also owns a fleet of vehicles, (primarily 4x4 pickup trucks) designed for hauling or towing light construction equipment, tools and safety gear. The vast majority of these pickup trucks are kept by our customers for periods of six to twelve months duration, or more.

These pickup trucks are the impetus for this letter since, as you may already know, the Alaska Department of Revenue has initiated criminal and civil investigations against Delta Leasing and several of our competitors for non-payment of rental car taxes alleged to be due under AS 43.52 in connection with the leasing of vehicles in their commercial equipment inventory. The purpose of this letter is to provide you with some background information and request that you review this matter. As explained below, we believe, following a careful review of this issue by our Alaska legal counsel, that the Department of Revenue has embarked on a misapplication of the Tourist Vehicle Rental Tax, and that Delta Leasing and many other Alaska businesses in our industry will sustain substantial damage and harm as a result of the Department of Revenue's interpretation of the statute.

I. Background: Alaska's Tourist Vehicle Rental Tax

In adopting the rental car tax statutes found in AS 43.52, the clearly stated goal of the Alaska Legislature was to generate revenue from tourists visiting Alaska and require that tourists bear a portion of the costs of maintaining Alaska's roads and tourism infrastructure. The sponsor statement for the legislation explained that "there were 1.6 million visitors to the state in 2002" and that "many of these visitors rent passenger vehicles." It described the reason for the tax as "a way for the State to raise revenues that could be used for road and highway maintenance, repair, and construction as well as contribute to the tourism industry for promotion and marketing." Subsequent committee hearings on the bill focused on this stated purpose and made it clear that the bill was intended to create a tax that targeted short term car rentals to tourists. This intent is manifested in the enacted law itself, which provides in AS 43 52 080(c) that "the legislature may appropriate the actual balance of the vehicle rental tax account for tourism development and marketing." Throughout hundreds of pages of legislative history, a

continually repeated theme is that legislature's goal was to enact a tax that would be paid by out-of-state visitors renting cars on a short-term basis:

To prevent the tax from being applied to long-term rentals and leases -- transactions that would typically involve Alaska residents -- the legislature expressly exempted any vehicle lease or rental exceeding 90 consecutive days, (same vehicle, same client, with no interruptions in rental period), from being subject to the tax. Additionally, the legislature limited the scope of the tax to passenger vehicles driven on a "highway or public-right-of-way," which excludes all of the privately maintained roads within the Prudhoe Bay / Deadhorse area. State maintenance ends at the northern-most terminus of the Dalton Highway, and all of the roads beyond that point are maintained by BP Exploration (Alaska), Inc. or other oilfield operators. Delta Leasing's office and rental yard in Prudhoe Bay is located beyond the end of the Dalton Highway and our North Slope customers operate our leased vehicles on privately constructed and maintained roads beyond the security checkpoints located just past our office and rental yard facility.

In the years that followed the original enactment of the tax statute in 2003, the legislature fine-tuned AS 43.52 to minimize its impact on Alaska businesses that were never intended as targets of this tax. To accomplish this, the legislature created exemptions for taxicabs, off-road vehicles, and rental trucks. This latter exemption is of particular importance to Delta Leasing, since a "rental truck" is defined as any motor vehicle with a gross vehicle weight rating over 8,500 pounds designed or used for transporting personal property. "Personal property," as defined by Alaska law, includes the equipment, tools, supplies and materials transported by Delta Leasing's vehicles, regardless of the fact that they are transported for commercial purposes. This exemption covers ¾ ton or 1 ton chassis 4x4 pickup trucks, which comprise most of the vehicles Delta Leasing offers for lease to our customers.

## II. The Department's Interpretation and Enforcement of the Rental Car Tax

Following enactment of the Tourist Vehicle Rental Tax in 2003, the Department of Revenue communicated information about the tax to conventional rental car companies to give them fair warning of the need to collect the tax from their customers. Significantly, the Department did not contact Delta Leasing or our many competitors who offer light industrial vehicles to commercial operators to warn that their vehicle leasing activities would be subject to the rental car tax. Presumably, the Department did not provide similar notice to Delta Leasing and others because the Department, itself, did not perceive that the tax statute applied to these leases. If the Department had provided such notice, Delta Leasing and our multiple competitors would have had a fair opportunity to open a dialog with the Department about the propriety of enforcing the tax against their business activities and /or begin collecting the tax from customers.

Thereafter, the Department adopted a regulation -- 11 AAC 52.030 -- which states in part that "unless the lease or rental contract contains a written term exceeding 90 consecutive days, the lease or rental is subject to the tax" and that "the extension or renewal of a lease or rental, or a new or supplemental contract, may not be combined with previous contracts." This regulation directly

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The legislature intended this tax to be a pass-through and did not intend the burdens to fall on the Alaska companies that offer short-term car rentals. The express provisions of AS 43.52 and the accompanying legislative history make it clear that rental companies were merely the intermediaries whose limited role was collecting and remitting a tax that was to ultimately be paid by rental customers.

conflicts with the plain text of the statute, which mandates that the tax only applies to the lease or rental of a passenger vehicle that does not exceed 90 consecutive days. The statute says nothing about renewals or extensions not being considered part of the original lease. The only requirement is that the lease or rental duration exceed 90 consecutive days. The statute does not differentiate between long term rentals that are the result of a contract with "a written term exceeding 90 consecutive days" and those that do not. In attempting to impose that distinction, the regulation subjects to potential taxation transactions that the legislature clearly intended to exempt.

Delta Leasing's first contact with the State regarding this tax came in the in fall of 2010. The Department submitted a general inquiry via our website contact form asking about our operations and stating that our vehicles might be subject to the tax. We sent a return letter explaining that our business almost entirely involves long term vehicle leasing of vehicles to commercial and industrial customers, as opposed to short-term rentals to tourists and visitors. Our business also almost entirely involves leasing of vehicles in excess of 8,500 pounds to commercial and industrial customers operating on the North Slope of Alaska, where there are no publicly maintained roads or rights of way. The Department responded with a letter offering some non-specific and non-responsive guidance regarding the rental car tax, and requested a copy of a sample lease contract to review. Delta Leasing complied with the State's request and submitted several sample form lease contracts. The closing line in our transmittal to the State said, "Please feel free to contact me if you would like to discuss this matter further after you've reviewed the lease agreements." We have attached copies of this correspondence with the Department to this letter.

Delta Leasing heard nothing further from the Department on this matter, and given the legislative history of this tax, we assumed that the information and sample leases we provided sufficed to resolve any question the Department had about the application of the tax to our business. The Department never initiated any form of follow up contact, never initiated a tax audit, and never sent any further notice that it believed any taxes were due.

### III. The Department's Pending Investigation of Delta Leasing

More than three years after these 2010 communications, on November 6<sup>th</sup>, 2013, Department agents, accompanied by armed police officers, went to Delta Leasing's Anchorage and Prudhoe Bay offices in a coordinated raid and seized numerous computers from our offices along with 70 bankers boxes of our business records and files pursuant to a criminal search warrant. To obtain this search warrant, a Department investigator alleged in an affidavit that Delta Leasing had violated AS 43.52 by offering to lease a heavy duty, ¾ ton work truck to an Alaska construction contractor without collecting the passenger vehicle excise tax. Apparently, the Department's employees believe that the Tourist Vehicle Rental Tax should be assessed against and collected from Alaska construction companies who lease trucks having a gross weight rating in excess of 8,500 pounds. Unquestionably, subjecting such leases to taxation is not within either the intent or the express wording of the statute.

Since having almost the entirety of our business records seized by the Department's investigators, Delta Leasing has extended every effort to cooperate with this investigation. We have requested settlement discussions to review what taxes may be owed, and whether the rental car tax is even applicable to companies such as Delta Leasing. We have clearly communicated the willingness of Delta Leasing to pay any taxes that might actually be owed, even though we never collected those taxes from any of our customers and now would be unable to "pass through" the tax to customers, as was the legislature's intent.

It has been and remains our good faith belief that Delta Leasing, as well as the multiple other Alaskan companies offering industrial vehicle leases to commercial operators, are not obligated to collect the tourism focused rental car excise tax from our commercial customers. Our belief and position are guided by the following factors:

1. AS 43.52's stated purpose and intent was to tax tourists visiting Alaska, not in-state industrial vehicle leases.
2. Since AS 43.52 defines a passenger vehicle as a vehicle "driven or moved on a highway or other public right-of-way in the State," vehicles leased on the North Slope are not subject to the rental car tax.
3. The rental car tax applies only when a lease or rental is 90 days or less, without regard to whether the vehicle in question is kept by a customer on a renewing lease, or lease extension of the same vehicle to same customer with no interruption.
4. AS.43.52 specifically exempts "rental trucks" with a gross vehicle weight rating over 8,500 pounds, which excludes ¾ ton or larger trucks that are designed or used to transport personal property.

Preliminary conversations with our core customers have confirmed that they are not being charged the 'Tourist Vehicle Rental Tax' by competitors who also lease vehicles for commercial and industrial use. We are now faced with an impossible dilemma of whether to start collecting a tax from our customers when a tax may not be due. If Delta Leasing begins collecting the rental car tax in wholesale fashion at this time, we will have an immediate competitive disadvantage in an industry where there are over a dozen other similarly situated Alaska businesses like ours that are not (to the best of my knowledge) collecting this tax from their customers.

With 26 full-time employees, we are a relatively small company. If the Department elects to pursue and clarify these significant legal issues in a criminal case against our company:

- Delta Leasing will not be able to submit bids for new customers and new work;
- Relationships with our existing customers will be severely damaged;
- We will be unable to retain key employees and technicians, and;
- Delta Leasing will be unable to obtain equipment financing which is critical for the company's survival in the highly competitive equipment leasing business

We believe that, at a minimum, the approach used by the Department when it made the determination that vehicle rental tax was not applicable to motorcycles should apply here. In 2009 and 2010, when the Department determined, years after it had been adopted, that the vehicle rental tax applied to motorcycles, the Department properly applied its interpretation only *prospectively*, and it did not seek to impose punitive and destructive claims for back taxes, interest, and penalties in the companies that had, very much like Delta Leasing, unknowingly failed to collect and pay the tax. The Department did so because it recognized that applying its new interpretation of the vehicle rental tax retroactively would, in addition to being legally questionable, be so punitive that it would drive many small Alaskan companies out of business. The same considerations and realistic view of the law and the history of this tax that was applied to the companies renting motorcycles should be accorded companies like Delta Leasing who engage in offering industrial vehicle leasing to commercial entities.



In summary, pursuing a criminal prosecution against our company based on an incorrect interpretation and application of the vehicle rental tax could drive Delta Leasing out of business, and put dozens of Alaskans out of work. In order to avoid that possibility, I respectfully request an opportunity to discuss this matter with you in hopes of developing a consensus approach that Delta Leasing, and our multiple competitors, can utilize to address any potential liability for past-due uncollected taxes, and develop an industry-wide standard for application of the rental car tax that can be applied to our future leasing activities.

Our company is owned and operated by long-term Alaskans with impeccable personal and professional reputations, and by a respected Alaska village Native corporation. Whatever the resolution of the underlying tax issue ultimately may be, it did not and does not require a criminal investigation to secure our compliance with the law. We will do whatever is required to be good corporate citizens, but we also believe that the Department has a responsibility to act fairly and reasonably, and not with an undue heavy hand, in resolving what undeniably is a bona fide legal issue and unclear area of the law. Given our commitment to Alaska, we will plan to file a tax return for the past three years and pay the tax under protest that we believe may be due, irrespective of the legislative intent for this statute. It is our sincere desire to work with the administrative process of your department to resolve our good faith dispute; however, the actions of the State may ultimately leave us with no choice other than to seek judicial review of this statute and the State's actions.

I will be working from our Prudhoe Bay office most of the early part of January, but would be available to meet with you at your convenience any time from January 20<sup>th</sup> on. Thank you for your consideration of this important matter.

Sincerely,

Rudi von Imhof  
President  
Delta Leasing, I.I.C

Enclosures:

- Delta Leasing 10/5/10 Letter to State of Alaska
- State of Alaska 10/14/10 Letter to Delta Leasing
- Delta Leasing 10/29/10 Fax transmittal coversheet to State of Alaska





Alaska Department of Revenue  
P.O. Box 110400  
Juneau, AK 99811-0400

December 27, 2013

Re: Payment of AS.43 52 Vehicle Rental Tax Under Protest

Attached you will find payment of vehicle rental tax quarterly tax returns for Delta Leasing. The tax returns cover the period reflecting 4<sup>th</sup> Qtr., 2010 through 3<sup>rd</sup> Qtr., 2013.

The filing of these returns and payment of this tax is under protest. AS.43.52 was not intended to tax vehicles rented for industrial purposes by Alaska Companies. These returns are for rented vehicles less than 8,500 GVWR leased to customers operated on publically maintained road systems for a duration of less than 90 days. None of this tax was collected from our customers.

Sincerely,

Rudi von Imhof  
President  
Delta Leasing, LLC

13 pages redacted



October 29, 2010

Mr. Johnathan Page  
Tax Auditor III  
550 W. Seventh, Suite # 500  
Anchorage, AK 99505-3566

Sent Via Fax: 269-664-- 20 pages

Re: Alaska Vehicle Rental Tax Compliance

Mr. Page,

Thank You for your recent letter with your input and interpretation of the tax law. Per your request, I have attached several representative lease / rental agreements with this letter for your review

Please feel free to contact me if you would like to discuss this matter further after you've reviewed the lease agreements.

Sincerely,

Rudi von Imhof



# STATE OF ALASKA

## DEPARTMENT OF REVENUE

### Tax Division

Sean Parnell, Governor

State Office Building  
PO Box 110420  
Juneau AK 99811-0420  
907 465 2320

550 W Seventh Suite 500  
Anchorage AK 99501-3566  
907 269 6620

www.tax.state.ak.us

October 14, 2010

Certified 7007 2680 0000 4635 8291

Delta Leasing, LLC  
Attn: Rudi von Imhof  
4040 B Street, Suite 200  
Anchorage, AK 99503

Re: Alaska Vehicle Rental Tax Compliance

Mr. von Imhof:

We have received your response letter dated October 5, 2010. In your letter, you listed three reasons why Delta Leasing is not subject to the tax. I've included your points (in italics) below, my interpretation of the tax law follows.

1. *"Our Company does not lease vehicles to consumers, we lease to business and / or commercial entities only." AS 43.52 makes no distinction between consumer, business or commercial renters.*
2. *"Our operations are almost exclusively located on the North Slope, (Prudhoe Bay), Alaska. We do pay the State Taxes in the form of Oil & Gas Property Taxes assessed on our vehicles and equipment. Only 6 % of the income we receive from vehicle and equipment leasing is derived from equipment not located on the North Slope of Alaska." AS 43.52 contains no provision for rental exemption by Alaska region. The Vehicle Rental Tax is mutually exclusive from other State of Alaska taxes.*

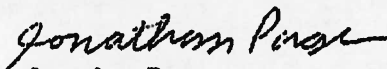
Delta Leasing, LLC  
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3. *"It is our policy for leases have a minimum duration of four to six months. More often we require twelve months or longer minimum lease duration on our leases. Many times, we offer flexible options for our clients to extend their original lease on a month-to-month basis after the original lease term has expired."* 15 AAC 52.030.  
**Effect of extensions, renewals, or new or supplemental contracts.**  
In determining whether a lease or rental exceeds a period of 90 consecutive days, for purposes of imposing the tax in AS 43.52.010 and 43.52.030, (1) unless the lease or rental contract contains a written term exceeding 90 consecutive days, the lease or rental is subject to the tax; (2) the extension or renewal of a lease or rental, or a new or supplemental contract, may not be combined with previous contracts; and (3) a lease or rental contract that contains a term exceeding 90 consecutive days is subject to the tax if that lease or rental contract is closed or completed on or before the 90th day.

Please fax a copy of a recently closed pickup truck, van or SUV lease/rental agreement to the Tax Division so we can review the contract language.

If you any questions, please call me at (907) 269-1023, or Sarah Wilson at (907) 269-1017.

Sincerely,



Jonathan Page  
Tax Auditor III  
(907) 269-1023  
(907) 269-6644 Fax

Cc. Collins Mount - Revenue Audit Supervisor

*\* This is a draft version of the letter dated 10/5/10 sent to Department of Revenue. To the best of our knowledge, this letter is a true and correct representation of the final version of the letter that was sent. (Copy of the original letter was confiscated by Department of Revenue on 11/6/13).*

October 5, 2010

Mr. Johnathan Page  
Tax Auditor III  
550 W. Seventh, Suite # 500  
Anchorage, AK 99505-3566

Re: Alaska Vehicle Rental Tax Compliance

Mr. Page,

I am responding to your recent request for clarification on Delta Leasing's responsibility to pay quarterly tax returns for the 10% Vehicle Rental Tax Income. It is my understanding that Delta Leasing is not subject to this tax for the following reasons:

1. Our Company does not lease vehicles to consumers, we lease to businesses and / or commercial entities only.
2. Our operations are almost exclusively located on the North Slope, (Prudhoe Bay), Alaska. We do pay the State Taxes in the form of Oil & Gas Property Taxes assessed on our vehicles and equipment. Only 6% of the income we receive from vehicle and equipment leasing is derived from equipment not located on the North Slope of Alaska.
3. It is our policy for leases have a minimum duration of four to six months. More often we require twelve months or longer minimum lease duration on our leases. Many times, we offer flexible options for our clients to extend their original lease on a month-to-month basis after the original lease term has expired.

Please review the above and let me know if I do not understand the intent of the tax stipulations correctly. If you have any questions, feel free to call me at 907-771-1305.

Sincerely,

Rudi von Imhof