# The Challenges of Leasing Mobile Property

*By David W. Machemer**

David Machemer provides an overview of some of the technical tax issues that may be encountered when leasing vehicles used to transport persons or property in interstate commerce.

**DAVID W. MACHEMER** is an Associate at the law firm of Horwood Marcus & Berk Chartered and concentrates his practice in state and local tax matters. David advises multistate and multinational taxpayers on state and local tax planning and resolution of tax controversies in the arenas of sales and use, income, franchise, motor fuel, real property and employment taxes. David previously worked for a Fortune 15 multinational company with a financial and leasing arm, where he learned the challenges and complexities of compliance in today's marketplace and the significant risks and costs associated with noncompliance. Prior to that, David served as an Illinois Assistant Attorney General where he represented the Illinois Department of Revenue in state tax litigation matters.



## Introduction

The lack of conformity amongst the states' state and local taxation (SALT) laws presents challenges for the multistate business. In the context of leasing mobile vehicles crossing state lines, these challenges can become increasingly prevalent. Generally, most states impose sales and use, excise or some other indirect tax on the lease of motor vehicles. This means there are no shortage of SALT issues involving the taxation of such property including, without limitation, the sourcing of receipts, determining how tax is remitted (upfront versus periodic rent payments) and making the determination of whether a vehicle qualifies for an exemption.

However, in addition to SALT issues, because the motor vehicle industry is a highly regulated and scrutinized industry, lessors and lessees must also keep their eye on dealer licensing and motor vehicle registration requirements. These requirements vary depending on the type, size or usage of the vehicle at issue. To operate efficiently within this industry, it is necessary for tax practitioners and industry members to have an understanding of the state's tax, motor vehicle *and* licensing laws.

This article provides an overview of some of the technical tax issues that lessors (and lessees) may encounter when leasing truck tractors[1] and trailers used to transport persons or property in interstate commerce. In addition to the SALT issues, a necessary discussion of the administrative and regulatory issues that one can expect to encounter is also included.

The following example illustrates some of the issues that may arise. Corporation ABC is headquartered in State W. It purchases a tractor from a vendor located in State X. Prior to delivery, Corporation executes a sale-leaseback with Lessor ABC.

  

Lessor ABC purchases the vehicle for subsequent lease and arranges shipment to Corporation ABC's subcontractor, Sam, who is located in State Y. Corporation ABC registers the vehicle in State Z. Sam garages the vehicle in State Y but will use the vehicle in all of the aforementioned states while transporting widgets across state lines. Which state's sales and use taxes control this issue?

*Predictably, dealer requirements vary by state and tend to be burdensome.*

Fortunately, most states provide what is commonly referred to as a common carrier or rolling stock exemption that exempts tractors, and other motor vehicles, from sales and use tax when the vehicles are used to transport persons across state lines. Nonetheless, the exemption requirements may vary amongst the states.

## Does a Lessor Need to Register as a "Dealer"?

It is impossible to start the tax discussion without preliminarily addressing lessor and lessee registration requirements. A lessor must first ask whether it needs to be licensed as a motor vehicle dealer. Commonly, the answer is yes. Predictably, dealer requirements vary by state and tend to be burdensome. Take Pennsylvania, for example, where all persons in the business of buying, selling or exchanging new or used motor vehicles or an interest in used motor vehicles are required to be licensed by the State Board of Vehicle Manufacturers, Dealers and Salesperson ("Department").[2] Only persons who sell, exchange or purchase less than five motor vehicles in a calendar year are exempt from license and registration requirements.[3]

Pennsylvania dealers must maintain an established place of business with a salesroom devoted principally to the vehicle business which is a building or portion of a building where books and records are kept.[4] The vehicle dealer application must include pictures of the building and display area, office with phone and filing cabinets, dealership sign and where business hours are posted.

Other states may not require a physical place of business in order to operate as a dealer. For example, Ohio has a "transient vendor" license that allows one to make retail sales, including the leasing of titled motor vehicles, without maintaining a physical place of business.[5] The type of state licensure may also vary depending on the type of vehicles sold. For instance, in Florida, persons seeking to purchase and lease motor vehicles must seek certification on an annual basis and must identify themselves as one of the following: independent dealer, franchise dealer, service dealer, wholesale dealer, auctions and salvage.[6]

In conclusion, lessors should review the licensing requirements of becoming a vehicle dealer. Most states impose a license requirement, which may include the establishment of a physical location in that state.

## What Is the International Registration Plan?

The flip side to dealer registration for lessors is the lessee's registration with the International Registration Plan (IRP). The IRP is a registration reciprocity agreement among jurisdictions of the United States providing for the payment of apportioned fees on the basis of total distance operated amongst the jurisdictions. The apportioned fees are made up of various registration, license and weight fees. The fundamental purpose of the IRP is to promote and encourage the fullest possible use of the highway system through free vehicle movement. This freedom is attainted, in part, by authorizing apportioned registration of vehicle fleets.[7]

Apportioned fees are paid to the various jurisdictions where the fleet operates, but only one license plate and one cab card is issued by a "base jurisdiction."[8] A base jurisdiction is the state where the registrant applies for apportioned registration under the plan.[9] At the conclusion of the year, the vehicle fleets will report their apportioned mileage (and fees) to each member jurisdiction where the vehicles traveled.[10] The IRP concerns itself primarily with what it calls "apportioned vehicles." These vehicles are defined as "any Power Unit that is used or intended for use in two or more [IRP] Member Jurisdictions and that is used for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property, and (1) has two Axles and a gross vehicle weight or a registered gross vehicle weight in excess of 26,000 pounds; or (2) has three or more axles, regardless of weight, or (3) is used in combination, when the gross Vehicle weight of such combination exceeds 26,000 pounds."[11]

The IRP is another layer that transportation businesses must be aware of. Luckily, the IRP provides an efficient mechanism to register large fleets of motor vehicles. Additionally, from a revenue standpoint, the apportionment of IRP fees eases the state's burdens of needing to collect sales and use tax revenue based on apportioned mileage within their state.

## Sales and Use Tax Considerations

With a few exceptions (discussed below), a lessor's purchase of equipment for subsequent lease is an exempt transaction under the sale for resale exemption. Thus, the lessee is subject to sales, motor vehicle or a similar indirect tax. Notably, in many states, the taxation of motor vehicles differs from other tangible personal property. Some states do not impose their traditional sales and use tax on the vehicle but impose a motor vehicle excise tax.[12] Often, this tax is remitted by the lessee or purchaser at the time of titling the vehicle. Other states impose a sales tax upfront on the cost of the vehicle,[13] on the periodic lease payments[14] or will give the lessor an option.[15]

Under the Agreement, Streamlined Sales Tax member states source periodic rental payments to the "primary" location of the property.[16] A nonstreamlined state, such as New York, may source the sale or lease to the point of delivery.[17] In states where an upfront motor vehicle or excise tax is imposed, sourcing will be the place of registration and titling of the vehicle.[18]

When vehicles are traveling in interstate commerce, lessors and lessee must implement practicality and reasonableness in identifying a primary property location. Thus, a good rule of thumb is for the lessor to designate the "garage" location of the vehicle as the primary property location whenever possible under the state sourcing laws. In practice, the garage location essentially serves as the vehicle's home. This is where the vehicle is stored when not in use, and it is commonly the location nearest to the vehicle's service location.

Often, lessors are limited by their lessee's representations of where the vehicles are located. A good lessor practice is to include a provision in the lease agreement that requires the lessee to notify the lessor of any address change locations, in writing, within 30 days of the address change. While enforcement of this provision may be difficult, this provision will assist the lessor in the explanation of any discrepancies between books and records of the vehicle and actual location under audit with a jurisdiction. Alternatively, the use of the lessee's business address has some deficiencies. This is because many times, lessees enter into "subcontracts" with independent persons who will drive the vehicles on behalf of the lessee, and who will have a different address from the lessee.

Another common address issue arises when the lessee identifies the IRP base jurisdiction as the vehicle's "garage" location. This practice can cause issues if the state department of taxation learns of a garage location other than the IRP base jurisdiction. For example, in Oklahoma, motor vehicles are subject to a 3.25-percent excise tax imposed on the value of the vehicle. However, IRP-registered vehicles with a combined gross vehicle weight of 55,000 or more pounds, and trailers, are subject to a $10 flat excise tax, making it a popular lessee choice for IRP base jurisdiction.[19] Unsuspecting lessees may register a vehicle in Oklahoma, pay the $10 excise fee and operate under the impression that it has satisfied all sales and use tax liabilities, regardless of where the vehicle operates.

However, if that vehicle is ultimately garaged in a different state, Tennessee, for example, then the Tennessee auditor is going to require proof of Tennessee tax paid or, alternatively, a Tennessee exemption certificate. Lessors, or jurisdiction auditors, may learn of the true location of the vehicle based on service location receipts, identification of vehicle drivers or by property tax records in states that impose personal property taxes.

## Commerce Clause

Inevitably, the imposition of tax on property used in interstate commerce will invoke U.S. Commerce Clause discussion. The U.S. Constitution's Commerce Clause restricts a state's ability to tax property outside its borders. The Commerce Clause states that the U.S. Congress shall have the power to "regulate commerce with foreign nations, and among the several states and with the Indian tribes."[20] Luckily, most states have an interstate carrier exemption that exempts tractors and trailers carrying persons or property in interstate commerce from taxation. Nonetheless, there are instances where Commerce Clause issues arise.

In *Complete Auto Transit Inc. v. Brady*,[21] the U.S. Supreme Court established a four-part test to determine whether a state tax violates the Commerce Clause. To survive scrutiny under the four-part test, the taxing state must establish the following: (1) nexus, meaning there must be a sufficient connection between the taxpayer and the state; (2) fairly apportioned, meaning the state may only impose tax on its fair share of the activity; (3) nondiscriminatory, meaning the state must treat out-of-state taxpayers equally to in-state taxpayers; and (4) related to services, meaning the tax must be fairly related to the services provided by the state to the taxpayer.

Then in *Quill Corp v. North Dakota,*[22] the U.S. Supreme Court established a physical presence test to determine whether a person has nexus with the state. The leasing of property by an out-of-state seller will almost universally create nexus between the lessor and the taxing jurisdiction.[23]

There are court decisions addressing the Commerce Clause in the context of interstate carriers. For instance, in *American Trucking Ass'n v. Mich. Public Service Commission, et al.*, the Court found that a $100 annual fee imposed on intrastate commercial hauling was a valid exercise of state's police power and found nothing suggesting that a local, neutral fee was inconsistent with the Dormant Commerce Clause.[24] More recently, the Supreme Judicial Court of Massachusetts affirmed the imposition of use tax on 100 percent of the purchase price of a fleet of trucks and trailers purchased outside Massachusetts, and subsequently brought into the state for use. The court found that imposing use tax on the entire purchase price did not violate the Commerce Clause of the U.S. Constitution under the four-part *Complete Auto* test.[25]

*Notably, in many states, the taxation of motor vehicles differs from other tangible personal property.*

In *Regency Transportation Inc. v. Commissioner of Revenue*, the taxpayer was an interstate common carrier transporting property throughout the eastern United States. The taxpayer was headquartered in Massachusetts and garaged its vehicles there. Additionally, the taxpayer completed about 35 percent of its maintenance and repair work in Massachusetts and employed between 63 and 83 percent of its workforce in Massachusetts. The taxpayer had major terminals and facilities in both Massachusetts and New Jersey.[26]

The taxpayer purchased its vehicles in New Hampshire, New Jersey, Indiana and Pennsylvania. Regency accepted delivery of the trucks outside of Massachusetts and registered the vehicles in New Jersey. Regency paid no sales tax because New Hampshire does not impose a sales tax, and the remaining states had a rolling stock exemption for which Regency qualified for. Massachusetts, however, is one of the few states that does not have a rolling stock exemption and imposed use tax on the entire cost of the vehicles.[27]

The court held that imposing use tax on the entire cost of the vehicles did not violate the Commerce Clause. The court focused much of its analysis on the second prong of the *Complete Auto* test (fair apportionment) and ultimately found that the use tax was fairly apportioned because Massachusetts offered a credit for sales and use tax paid to other jurisdictions. The credit eliminated the possibility of double taxation.[28] Unfortunately for the taxpayer here, there were no credits to take because sales tax was not due in any other jurisdiction.

The court also found that the statute did not violate the nondiscriminatory prong because it treated out-of-state taxpayers identically to in-state taxpayers. While out-of-state taxpayers would likely pay more tax per mile, the court emphasized that the tax was on the use of the vehicle in Massachusetts and not on the use of miles driven.[29] The taxpayer's use, storage and maintenance of vehicles in Massachusetts also instructed the court on *Complete Auto's* final prong (relation to state services). There, the court found the use tax was justified given the nature and extent of taxpayer's services in Massachusetts and also the benefit it receives from its presence in the state.[30]

The *Regency* case is a tough pill to swallow for taxpayers who may be garaging their vehicles in Massachusetts but use the vehicles for transporting persons or property in interstate commerce. Undoubtedly, these vehicles are accruing mileage outside of Massachusetts, and on face value, there is an element of unfairness that Massachusetts gets to tax the 100 percent of the cost of the vehicle despite less than 100 percent of the use occurring in Massachusetts. Ultimately, a driving factor in the court's decision may have been that it was forced with the decision of imposing 100 percent of the tax or letting the taxpayer purchase the motor vehicle completely tax free.

From a sales tax planning perspective, when a business has multiple terminals and business locations from which it will operate motor vehicles to transport persons or property across state lines, it should perform a thorough review of the applicable sales tax laws and choose a jurisdiction that has a common carrier exemption. Nearly all states have a common carrier exemption, or similar exemption that will eliminate or reduce the indirect tax due on the purchase or use of a motor vehicle.

## Interstate Carrier Exemption

While states interstate carrier exemptions may differ in specifics, there are some common themes of the interstate carrier exemption amongst all states. Generally, the exemption is available for individuals with carrier authority who drive tractors and/or trailers that transport persons or property across state lines. Where states vary are on requirements involving driver authority (common for-hire versus contract), vehicle weight and the mileage accrued outside of the garage state.

## Driver Authority

Drivers who transport persons or property across state lines must have common or contract authority. This is granted by federal and/or state agencies.[31] Common carriers provide for-hire truck transportation to the general public. Conversely, contract carriers provide for-hire truck transportation to specific, individual shippers based on contracts. Most states that have an interstate carrier exemption require the driver to have "common carrier" or for-hire credentials.[32] Some states, however, will extend sales and use tax exemption to all carriers or anyone carrying authority credentials.[33]

The common-versus-contract carrier distinction should not be overlooked. For example, in *Donald Santisi Trucking Co. v. Limbach*, the Ohio Department of Revenue denied a trucking company's claim for use tax exemption on the purchase of trucks used to transport property in interstate commerce.[34] The company primarily hauled fruits and vegetables all over the country for delivery to a single customer. After delivering the produce to its customer, the company would "trip lease" finished steel goods for various local trucking firms. This activity accounted for a minor amount of mileage. The department denied the exemption on the basis that the company did not operate exclusively for common carrier purposes.

On review, the court found "[i]t is established in Ohio that when a trucking company is authorized to act as a common carrier, it holds itself out as willing to serve the general public … [T]rucking companies [who are] authorized to act as common carriers … but operate as contract carriers, are not engaged in rendering a public utility service."[35] When such equipment is used interchangeably for contract and common carrier hauling operations, such use is not exclusive operation as a common carrier and does not qualify for the exemption.[36]

In the context of leasing, a lessor did not qualify for the common carrier exemption because it was not the party holding proper credentials. In *Robbins v. State Tax Assessor,* the Maine Supreme Court held that tractors purchased by taxpayer who then leased them to others for use in interstate commerce did not qualify for an exemption for goods purchased for use in interstate commerce.[37] In Maine, the lessor is considered the user of the leased property. Due to this distinction, the court did not allow the lessee's exempt use of the vehicle to flow through for the lessor's benefit in claiming the exemption.[38]

In short, lessors should be aware of a lessee's credentials prior to exempting the lease from sales tax. Lessors can verify the credentials with an exemption certificate, lessee's certificate of authority issued by a regulatory agency or verifying on the federal government website *www.safer.gov*.

## Weight qualifications

Most interstate carrier exemptions include a vehicle weight limit in order to ensure that only tractors are qualifying for the exemption. Often, trailers will be separately identified in the statute if they qualify.[39] The weight limits will vary from state to state. Many states adopt the IRP's specified weight of 26,000 pounds.[40] Others may impose different requirements such as Oklahoma's 55,000 gross vehicle weight rating.[41] The weight limit is generally not an issue when leasing tractors because most of these vehicles clearly exceed weight thresholds.[42]

> *Lessors should collect a properly completed exemption certificate from the customer prior to exempting any transactions from sales and use tax.*

## Usage Requirements

Some states have specific mileage that must accrue outside the garage state. For instance, in Illinois, the claimant must carry persons or property in interstate commerce more than 50 percent of its total trips in a 122-month period or more than 50 percent of its total miles in a 12-month period.[43] In Michigan, certain commercial vehicles may be exempt if the vehicles transport persons or property for hire, across state lines and at least 10 percent of the fleet mileage accrues outside Michigan.[44] In Louisiana, trucks with a gross vehicle weight rating of 26,000 pounds or more are exempt if the vehicles are used at least 80 percent of the time in interstate commerce.[45] Conversely, Texas merely requires the vehicles to be IRP registered in order to qualify for the sales and use tax exemption and does not impose any kind of mileage requirements.[46]

In *UPS v. State*, the United Parcel Service sought judicial review of the department's assessment of a use tax on plaintiff's vehicles that were operated exclusively within the state or which had left the state on fewer than 25 percent of their trips.[47] Washington had a sales and use tax exemption for trucks operated by an individual with carrier authority where the vehicle was used in substantial part for transporting persons or property across state lines.[48] At issue, was what was meant by "transporting persons or property across state lines." UPS's position was that only the commerce inside the trucks had to travel across state lines more than 25 percent of the time. Conversely, the department argued that the vehicles had to physically cross state lines to qualify for the exemption. The court agreed with the department, finding that the vehicles must cross state lines in substantial part.[49]

Lessors should collect a properly completed exemption certificate from the customer prior to exempting any transactions from sales and use tax. The exemption certificate will serve as the lessee's certification as to the usage of the vehicle. Alternatively, or in addition to, a lessor could consider requesting a "letter of usage" from the lessee to include a declaration regarding usage of the vehicle. If the issue of mileage comes up on audit, lessors should request driver logs capturing miles driven and IFTA fuel receipts from the lessee to evidence where the vehicles accrued mileage.

## Unique State Issues

Lastly, some unique issues can arise in the context of leasing tractors used in interstate commerce. The last three sections of this article highlight three unique state issues that transportation industry members should be aware of.

## Illinois Leasing Issues

Traditionally, in the context of leases, most states impose tax on the rental receipts received from the lessee. These states deem the lessee to be the user of the property. Illinois and Maine, and California in the context of Mobile Transportation Equipment (MTE), treat leases differently than a majority of other states by subjecting the lessor to use tax as the user of the property.[50]

In Illinois, lessors who lease tangible personal property are not subject to the Retailer's Occupation Tax (Sales Tax), but rather, are treated as the user of the equipment and are subject to use tax.[51] Thus, lessors may not issue the vendor a resale certificate when it purchases property for subsequent release. Lessors must pay applicable use tax to their suppliers (if registered) or at the time of titling and registration. Even though the lessors are deemed to be the user of the vehicle, Illinois law allows the lessor to recoup this cost from its lessees through private contract.[52]

Illinois does have a rolling stock exemption for sales of tangible personal property sold to interstate carriers for hire for use as rolling stock in interstate commerce.[53] However, because of Illinois' taxing structure, not all lessee "exemptions" will flow through for the lessors use.[54] Fortunately for lessors, the Illinois' rolling stock exemption does flow through to the lessor.[55]

Lessors should be aware that Illinois' state exemption form forces the lessor to certify as to the vehicle's use. This raises the issue of how a lessor is to certify as to another, the lessee's, use of the vehicle. This places an unreasonable, and likely impossible, burden on the lessor. In practice, lessors should contemplate requiring the lessee to provide the lessor with a letter of usage forcing the lessee to certify as to the usage of the motor vehicle.

## California Mobile Transportation Equipment

In California, MTE is subject to unique tax treatment. MTE includes only equipment for use in transporting persons or property for substantial distances such as trucks, truck tractors and truck trailers.[56] Traditionally, California imposes tax on the purchaser based on the fair market value of the vehicle. Lessors of MTE, however, may issue a resale certificate to the vendor for the limited purpose of reporting use tax on the fair market value of the equipment on the rental receipts.[57] Alternatively, the lessor may elect to pay use tax on the periodic payments from the lessee.[58] This election must be made at the time of purchase and is irrevocable. The catch is that if the lessor chooses this election, tax will be due on the rents for the entire life of the equipment while in the lessee's possession. This means if the lessee were to move this equipment outside of CA, the lessor would still be subject to CA rental tax on the vehicle. Additionally, tax is due even though the lessee does not make the required lease payments.[59]

California does have an interstate exemption, but like their taxing structure, the exemption is unique. California exempts vehicles for use in out-of-state or foreign commerce. The sales or use tax does not apply to vehicles delivered in-state by the manufacturer or remanufacturer to purchasers who are not California residents for use exclusively in out-of-state or foreign commerce, if the purchaser (1) purchases the vehicle from a dealer located out-of-state and (2) removes the vehicle from California 30 days from and after the date of the delivery.[60] Additionally, use tax will not apply if a vehicle is used, stored or both outside of California one half or more of the time during the six-month period immediately following the entry into California.[61] Similarly, trailers for use in interstate, out-of-state or foreign commerce are exempt from sales and use tax if the following criteria are met: (1) The trailer is manufactured or remanufactured out-of-state and is removed from California within 30 days from and after the date of delivery; or (2) the trailer is manufactured or remanufactured in-state and is removed from California within 75 days from and after the date of delivery.[62]

Lessors should be wary when electing to pay tax on the rental receipts rather than on the cost of the vehicle, as this election is made for the life of the equipment. Additionally, if the equipment qualifies for California's interstate carrier exemption, the lessor must collect an affidavit from the lessee attesting that the equipment qualifies for the exemption.[63] On audit, this affidavit will be critical to proving the equipment qualified for the exemption. Fuel receipts and driver logs are good documentation to evidence the usage of the vehicle.

## Colorado Refund Opportunity

In most states, the lessee can present an exemption certificate at the outset of the lease that will exempt the lease payments from applicable sales and use tax. However, this is not the case in Colorado. Effective July 1, 2011, Colorado declared commercial vehicles used in interstate commerce may be eligible for a sales and use tax refund. The lease must be in excess of 36 months for a truck tractor or semi-trailer with a gross vehicle weight rating of 54,000 pounds or greater.[64] The refund for leased vehicle must be filed at the conclusion of each of the three calendar years in order to claim the refund. Notably, this exemption is limited to the 2.9-percent state sales and use tax paid.[65]

In a General Information Ruling, Colorado interpreted this exemption to mean that while an exemption is available for vehicles used in interstate commerce, the vehicle must be correctly registered in Colorado to qualify. The ruling hinted that Colorado may interpret this to mean that the IRP base jurisdiction must be Colorado if the vehicle is garaged and/or serviced in Colorado. According to Colorado, if the vehicle is garaged, serviced and repaired in Colorado, "it would appear that the base of operation for IRP purposes is in Colorado, and therefore the vehicles should be garaged in Colorado."[66] Thus, if a lessee has a base jurisdiction outside of Colorado, but garages the vehicle in Colorado, the exemption may not apply.

Colorado's position is troubling because many lessees will elect an IRP base jurisdiction that is convenient for their entire fleet. The IRP jurisdiction may match the garage location of each vehicle. For example, a lessee may elect Oklahoma as its base jurisdiction because its primary business operations are in Oklahoma. However, it may garage one of these vehicles in Colorado because the vehicle will be used for deliveries in Oklahoma, Colorado, Nebraska and South Dakota. In this scenario, under the department's interpretation, the vehicle may not qualify for the interstate exemption.

## Practical Takeaways

The leasing of mobile transportation used to transport persons or property across state lines presents compliance challenges for both lessors and lessees. Some practical takeaways to ease these burdens are the following:

(1) Both parties should be aware that most states have a common carrier exemption that exempts purchases of tractors and trailers from sales tax. Due to the differences of state laws, lessors should not automatically assume that their lessee qualifies for the exemption every time a tractor or trailer is leased. They must collect properly completed exemption certificates prior to exempting the lease.

(2) Lessors should use *https://safer.fmcsa.dot.gov/* when verifying the operating authority of a lessee. There, lessors can perform entity-based searches and find out the type of credentials the lessee is holding.

(3) Lessors should consider using contract provisions that require lessees to notify the lessor of equipment change locations, in writing, within 30 days of any move. Similarly, lessors should consider requesting a letter of usage from the lessee if they are leasing property in a state that has stringent usage requirements.

(4) Lastly, lessors (and lessees) should consider building a taxability matrix for each state they are leasing property. This matrix should provide taxability decisions for each state, a determination of the taxable base and what exemptions are available. This tool can be incredibly helpful for salespersons and others who are not familiar with state and local tax issues. Many times, if the parties are not well versed on tax issues, these issues come up right before the deal is ready to close. Be prepared and do not let a sales tax issue prevent the deal from closing. Create a matrix and provide training sessions for those individuals in the field.

### ENDNOTES

* John R. Fox, a third-year law student at Chicago-Kent College of Law, assisted in the preparation of this article. Mr. Fox has an expected graduation date of May, 2017.

1 Over-the-road motor vehicles, commonly referred to as "semi-trucks" by people not familiar with the trucking industry, are commonly referred to as "tractors" by members within the industry. Throughout this article, the use of the term "tractors" refers to the chassis or motor vehicle driven. Trailers are the unpowered vehicle towed by another. Tractor-trailers include both.

2 63 P.S. 818.2.

3 63 P.S. 818.26.

4 63 P.S. 818.5(e)(1)-(2).

5 Ohio Rev. Code Ann. 5739.17(D).

6 Fla. Stat. §320.27.

7 International Registration Plan, Section 105, Sept. 1973, *www.irpinc.org*. IRP was developed by the American Association of Motor Vehicle Administrators.

8 *Id.*, at Article II.

9 An applicant may elect its base jurisdiction as any member jurisdiction (1) where the applicant has an established place of business, (ii) where the fleet the applicant seeks to register under the plan accrues distance and (iii) where records of

the fleet are maintained or can be made available.

[10] In addition to the rules imposed by the IRP, individual states may have their own rules on whether a business may elect their state as a base jurisdiction. For example, Minnesota requires that the registrant has an established place of business in Minnesota and (i) accrues fleet miles in Minnesota; (ii) has a physical structure located within Minnesota (business or office) owned, leased or rented by the registrant; (iii) the physical structure must be designated by a street number or road location (not a post office); (iv) must be open for business with business hours; and (v) located within the physical structure must have permanent employees of the registrant conducting business for the registrant and operational records of the fleet. *See* Minnesota IRP License Manual *https://dps.mn.gov/divisions/dvs/forms-documents/Documents/MotorCarrier-MN-IRP-License-Manual.pdf.*

[11] *IRP* Article II.

[12] South Dakota Codified Laws §32-5B-1 *et seq*. (2016); Indiana Code §6-6-5-2 *et seq*. (2008); New Mexico Statutes §7-14-1 *et seq*. (1978).

[13] 35 Illinois Compiled Statutes §105/1a *et seq*. (1977).

[14] Tennessee Code §67-6-204 *et seq*. (2013).

[15] Missouri Statutes §144.440 *et seq*. (2013).

[16] *See* in Code Section 6-2.5-13-1, Mich. Comp. Laws Section 205-69, N.J. Rev. Stat. Section 54:32B-3.1.

[17] NYCRR 525-2(a)(3).

[18] S.C. Ann. Code 12-36-910(A).

[19] 68 Okla. §2103.

[20] U.S. Const. Art. I, §8, Cl 3.

[21] *Complete Auto Transit Inc. v. Brady,* SCt, 430 US 274, 97 SCt 1076 (1977).

[22] *Quill Corp v. North Dakota,* SCt, 504 US 298, 112 SCt 1904 (1992).

[23] Co. Stat. Section 39-26-102(3), Fla. Tech. Assistant Advisement No 6A-31 (Oct. 24, 2006), Ky. Rev. Stat. Ann. Section 139-340, Idaho Code 63-3611(3)(c), Minn. Rev. Notice 00-10 (Nov. 6, 2000).

[24] *American Trucking Ass'n v. Mich. Public Service Commission, et al.*, SCt, 545 US 429, 125 SCt 2419 (2005).

[25] *Regency Transportation Inc. v. Commissioner of Revenue*, 473 Mass. 459 (2016).

[26] *Id.,* at 460.

[27] *Id*. (Massachusetts abolished its rolling stock exemption in 1996).

[28] *Id.,* at 468. ("Regency is not subject to the imposition of multiple use or sales taxes in other jurisdictions … the use tax is fairly apportioned in keeping with the requirements of the commerce clause.")

[29] *Id*., at 468 and 469.

[30] *Id*., at 470–471.

[31] 49 CFR Parts 390, Federal Motor Carrier Safety Regulations; Tennessee Code §65-15-109; 66 Pa. Con. Stat. §2501, 2509.

[32] *Graf v. State, Dep't of Rev.*, 292 So2d 599 (1974) (Citing Fl. Stat. §212.08(9): Partial exemptions; railroads and motor vehicles engaged in interstate or foreign commerce. Granting exemptions for "motor vehicles that are engaged in interstate commerce as common carriers," *i.e.,* carriers who "hold themselves out to the public." *Graf* at 601.)

[33] In Texas, a motor vehicle sales tax is due on retail sales of motor vehicles. Tex. Tax Code Ann. §152.001. However, Texas exempts the vehicles from this tax if they are an interstate motor vehicle. "Interstate motor vehicle" means a motor vehicle that is operated in Texas and another state or country and for which registration fees could be apportioned if the motor vehicle were registered in a state or province of a country that is a member of the International Registration Plan. Tex. Tax Code Ann. §152.089.

[34] *Donald Santisi Trucking Co. v. Limbach,* 1988 WL 38872 (1988).

[35] *Id.,* at 3.

[36] *Id.*

[37] *Robbins v. State Tax Assessor*, 536 a2d 1127 (1988).

[38] *Id.,* at 1129.

[39] Ark. Code Ann. §26-52-436, Ark. Code Ann. §26-53-144(c).

[40] Idaho Code §63-3622R(c), N.J. Rev. Stat. §54:32B-8.43.

[41] 68 Okla. §2103.

[42] Tennessee §67-6-902(d)(2)(B).

[43] 35 ILCS 105/3-61(c).

[44] Michigan Compiled Laws 205.54r.

[45] Louisiana defines "interstate commerce" to mean that the vehicles are moving goods from a place outside the State of Louisiana to a place inside Louisiana and *vice versa*. Additionally, those trucks that are just passing through the state will qualify for the exemption La. Rev. Stat. Ann. Section 47:305.50A, La. Rev. Ruling No. 04-005 (Aug. 16, 2004).

[46] Tex. Tax Code Ann. §152.089.

[47] *UPS v. State,* 102 Wn2d 355 (Wa. 1984).

[48] 102 Wn2d 355, 361 (Wa. 1984).

[49] *Id*., at 362–363.

[50] 86 Ill. Admin. Code §130.220, *Robbins v. State Tax Assessor*, 536 a2d 1127 (1988). Discussion on California below.

[51] 86 Ill. Admin. Code §130.220.

[52] ST 11-0002-GIL (Jan. 7, 2011).

[53] 35 ILCS §120/2-50, 35 ILCS §105/3-60, 86 Ill. Admin. Code §130.340.

[54] 86 Ill. Admin. Code §130.2010(b).

[55] ST 11-0002-GIL (Jan. 7, 2011), 86 Ill. Admin. Code §130.340.

[56] Cal. Code Regs. 15 §1661.

[57] Cal. Code Regs. 18 §1668(f).

[58] Cal. Rev & Tax Code §6094.

[59] Cal. Code Regs. 15 §1661(B).

[60] Cal. Code. Regs. 18 §1620.1.

[61] Cal. Code. Regs. 18 §1620.

[62] *Id.*

[63] Cal. Code. Regs. 18 §1620.1.

[64] Co. Rev. Stat. Section 39-26-113.5.

[65] Colorado local tax rates can be upwards of seven percent and many are home-rule municipalities, meaning, they have established their own set of sales tax rules and exemptions.

[66] GIL 14-021 (Oct. 9, 2014).