



## Charges for "a negotiated payment for compensation for lost business and profits and for which the payer will receive no tangible goods or services in return"

**LR: 2010-2-SUT – Issued November 4, 2010**

**Tax: Sales and Use Tax**

Taxpayer requested a Letter Ruling regarding the application of the New Jersey Sales and Use Tax Act to charges for "a negotiated payment for compensation for lost business and profits and for which the payer will receive no tangible goods or services in return".

### **Facts**

Taxpayer is required to perform site remediation related to Manufactured Gas Production sites (MOP site remediation). One of these sites is owned and operated by an unrelated and undisclosed third party and rented to an unrelated and undisclosed fourth party who conducts a business at the site. The site remediation work that will be performed by Taxpayer will disrupt the business of the fourth party by preventing ingress or egress to the related property. This disruption will result in lost business and profits for a period of three to four months.

Taxpayer negotiated to pay monthly compensation for the lost profits. Taxpayer is not receiving any tangible goods or services in return for the settlement payments. In consideration of the Settlement Sum, Taxpayer and all related entities, persons, etc. "is released from and against any and all actions, causes of action, suits, claims, charges, complaints or rights of any kind, which it may now have or in the future may have against the Taxpayer, etc. arising from or relating to lost profits and business interruption related to the work."

### **Issue**

Is a negotiated payment for compensation for lost business and profits and for which the payer will receive no tangible goods or services in return subject to sales or Use Tax?

### **Discussion**

The New Jersey Sales and Use Tax Act imposes tax upon the receipts from every retail sale of tangible personal property, digital property and the sale of certain services. N.J.S.A. 54:32B-3(a); N.J.S.A. 54:32B-3(b). "Sale, selling or purchase" means "any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this act, for a consideration or any agreement therefor." N.J.S.A. 54:32B-2(f).

### **Conclusion**

Since there is no "sale" of tangible personal property, digital property or enumerated services as described in the above facts, Sales and Use Tax is not due on a charge for a negotiated payment for compensation for lost business and profits.

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A Letter Ruling is limited to the facts set forth therein and is binding on the Division of Taxation only with respect to the person or entity to whom it is issued and only if the person or entity

fully and accurately describes all relevant facts. A Letter Ruling is based on the law, regulations, and Division policies in effect as of the date the Letter Ruling is issued or for the specific time period at issue in the Letter Ruling.