

CHAPTER 5

PAYMENTS UNDER REAL PROPERTY LEASES

0501 LEASES

050101. General

A. Applicability. Leases are subject to the statutory and regulatory provisions applicable to government contracts, as well as the specific statutory provisions pertinent to leases.

B. Coverage. A lease is a contract by which the use of land or buildings is conveyed for a specified time at a specified rate of compensation. Leases describe the premises, the specific period involved, purpose for which used, the amount of rent, method of payment, special services included (such as heat, light, water, and janitorial services) and any restoration provisions. If the lessor fails to provide the services in this case called for in the lease, the lessee (the government in this case) may pay the cost and deduct the amount from the lease rental payments.

1. Capital Lease. A lease that is essentially equivalent to an installment purchase of property is a capital lease. This type of lease transfers substantially all the benefits and risks of ownership from the lessor to the lessee.

2. Operational Lease. Leases that do not meet the criteria for a capital lease are considered to be operational leases.

050102. Rent

A. Fractional Parts of a Month. Payment for part of a month for leased premises is made on the actual number of days involved. In computing the time between two dates, the general rule is to exclude the first and include the last date, except when the lease is for a specified term and begins on the date of occupancy (10 Comp Gen 540 (1931)).

B. Monthly Installment Payments of Annual Rent. A lease generally begins on the first of a month. For leases that begin on a date other than the first, the monthly rent installments become due and payable on the date of each month numerically corresponding to the date the term began, less one day. The amount of each installment should be one-twelfth of the annual rate, regardless of the number of days in any calendar month (24 Comp Gen 838 (1945)).

C. Recurring Rental Charges. Payment for these charges shall be made without requiring individual invoices from the vendor. At the end of each rental period, the using activity will confirm the use or availability of the property during the rental period. Identify lease and period covered on the payment voucher and process per provisions of the lease.

D. Reporting Rental Payments Made to Civilian Landlords. At the end of each calendar year, report yearly rental payments of \$600 or more to the Internal Revenue Service (see paragraphs 060505 and 060601). Report total payment on TD Form 1099-MISC, Statement for Recipients of Miscellaneous Income. Do not report payments to real estate agents.

050103. Party Entitled to Rental Payment

A. When a Federal Agency occupies land under a lease, the rental payment cannot be avoided because of any defect in the title of the lessor at the time the lease was made (9 Comp Gen 593 (1921)).

B. When a Federal Agency occupies land owned by several tenants in common under an agreement with one of them and without objection by the others, such tenant in common is entitled to receive the rent (9 Comp Gen 593 (1921)).

C. When property leased to the United States is sold on one day and the deed of conveyance is executed on another day, the grantee is entitled to receive the rental from the property only from and after the date of execution of the deed (15 Comp Gen 195 (1935)).

D. Liability for rent due does not become payable day-by-day. It becomes due in total on the dates set forth in the lease. The payment may not be currently prorated for several owners who may have owned the premises for a portion of the rental period. When leased property is sold, a copy of the deed of sale should be furnished for association with the lease contract (4 Comp Gen 193 (1924)). If proper notification is provided to the lessee, payment is made to the titleholder on the day payment is due.

050104. Payment for Leased Land. Payment for leased land may not be made in advance (23 Comp Gen 653 (1944) and 25 Comp Gen 834 (1946)). Leases in foreign countries are paid as local customs dictate.

0502 LEASES: TAXES AND IMPROVEMENTS

050201. Payment for Cost of Improvement of Rented Premises. The laying of conduits and wires in leased premises occupied by Federal Agencies is an improvement of the premises. Unless the lease provides for the making of such improvements by the United States, payment of the cost is not authorized (6 Comp Gen 943 (1923)).

050202. Payment of Taxes on Property. Although taxes are not payable by the Federal Government as the owner of real property, such taxes are properly payable as part of the rent when specifically included in the terms of the lease (24 Comp Gen 705 (1945)).

050203. Payment of Rent in Connection with Termination of Lease. Payment is based on the terms of the lease. Leases containing standard U.S. Army Corps of Engineers termination clause require payment for the day after the notice of termination is mailed plus 29

days more. Leases with other termination provisions must be analyzed on an individual basis.