DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-0176
Sales/Use Tax
Periods of 2000 Through 2002

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ISSUES

I. Sales/Use Tax: Rental Invoices

Authority: IC 6-2.5-2-1; IC 6-2.5-9-4; IC 6-8.1-5-1(b); 45 IAC 15-11-2.

The taxpayer protests the proposed assessment of taxable sales on rental invoices between closely held companies.

STATEMENT OF FACTS

The taxpayer's main business is the renting of construction equipment, such as dump trucks, fork lifts, loaders, etc. The taxpayer does not provide operators for the construction equipment leased to the taxpayer's customers. More facts will be provided as needed below.

I. Sales/Use Tax: Rental Invoices

DISCUSSION

As noted, the taxpayer leases construction equipment. Regarding the taxpayer's business, the Auditor noted, "[m]ost of the equipment is leased to a 'sister' corporation, [Company X]." The Auditor found that:

> [T]he taxpayer computed their sales tax liability on computer generated invoices to [Company X, the 'sister' company] by taking the total amount billed and dividing by 1.05 to arrive at their taxable sales.

The Auditor further stated that an adjustment was made "to increase the taxpayer's taxable sales … based on the fact that the taxpayer is not allowed to consider sales tax to be included in the sales figure when the tax is not separately stated on the sales invoice."

The relevant statutes at issue are IC 6-2.5-2-1 and IC 6-2.5-9-4. The former states:

> (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
> (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

And the latter states in pertinent part:

> (a) Except as provided in IC 6-2.5-7, a person who:
> (1) displays an advertised price, marked price, or publicly stated price that includes the state gross retail or use taxes;
> (2) offers to assume or absorb part of a customer's state gross retail or use tax on a sale; or
> (3) offers to refund part of a customer's state gross retail or use tax as a part of a sale;
> commits a Class B infraction.

The two statutes dovetail together: IC 6-2.5-2-1 requires the tax to be "a separate added amount" and IC 6-2.5-9-4 makes it a Class B infraction to display "an advertised price, marked price, or publicly stated price that includes the state gross retail or use taxes…."

The taxpayer argues that it and Company X "are operated under common ownership, share administrative office space and have enjoyed a working relationship since [the taxpayer's] inception." The taxpayer argues:

> The Companies had an oral agreement that sales tax was part of the rental price as quoted for each piece of equipment. We acknowledge that the invoices did not reflect that the sales tax was included in the gross price.

In addition, the taxpayer also intimated that it did not run afoul of the "added amount" language of IC 6-2.5-2-1(b). However, the language of IC 6-2.5-2-1(b) is clear, particularly so when read in conjunction with IC 6-2.5-9-4. The tax law does not allow for an "oral contract" to circumvent the statutory requirements outlined above. (It should also be noted a negligence penalty was imposed, but the taxpayer did not develop any arguments regarding the penalty and is thus denied on the penalty too—*See* IC 6-8.1-5-1(b) regarding the taxpayer's burden of proof, and 45 IAC 15-11-2 regarding the penalty).

FINDING

The taxpayer's protest is denied.

DP/JM-052510