DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0171
Sales/Use Tax
For the Period: 1994-1996

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ISSUE

I. Sales/Use Tax: Sales/Use Tax Remittance

Authority: IC 6-2.5-4-10; IC 6-2.5-9-3; IC 6-8.1-5-1.

Taxpayer protests the Department's proposed assessment of sales tax on leased vehicles; the taxpayer also protests the proposed assessment of use tax on mailings.

STATEMENT OF FACTS

The taxpayer is an automobile dealer that sells new and used cars and trucks. More facts will be provided below.

I. Sales/Use Tax: Sales/Use Tax Remittance

DISCUSSION

The taxpayer protested a handful of issues, many of which were resolved before the hearing stage of the protest. The following were resolved: a sales tax adjustment attributable to the value of vehicle trade-ins on leased vehicles; an error in the calculation of use tax on consumable supplies; use tax on three items; and a portion of the sales tax on trade-in capital cost reductions. Two issues were not resolved and are dealt with in what follows.

The taxpayer states the following in correspondence with the Department.

> To briefly summarize, the Company leases vehicles to customers. Typically in such a transaction, the dealership will collect the following from the customer: security deposit, first month lease and a cash down payment (capital cost reduction). The dealer collects sales tax on the first month lease and the cash down payment.

The taxpayer goes on to explain that it (*i.e.*, the dealer) "remitted [sales tax] to the Leasing Company. The leasing company in turn remitted the sales tax in question to the Indiana Department of Revenue."

The auditor describes the issue thusly:

> The taxpayer stated that [Company X] Finance Corporation has remitted the taxes on these transactions. The cash down payments in question are part of leases financed through [Company X] Finance Corporation. No documentation was provided by the taxpayer to verify that [Company X] Finance remitted the correct tax on these transactions. However a letter was provided by [Company X] Finance stating the tax was paid.

And further:

> The taxpayer collected tax from the customer on these amounts but failed to remit the tax. The taxpayer stated that [Company X] subtracts the tax payments from the payoff on the deal and remits the tax on these cash down payments together with tax collected from monthly lease payments.

The auditor went on to state that as a "retail merchant" the taxpayer "has a duty to remit all taxes collected from customers held in trust for the state."

At hearing the taxpayer argued that the lease is between the customer and the finance company, that the taxpayer (dealership) does not contract with the customer. Taxpayer also noted that at the end of the lease, it is the finance company's car, not the dealer's.

Indiana Code 6-2.5-4-10(a) states that, "A person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person," and IC 6-2.5-9-3 says state gross retail or use taxes are held in "trust for the state."

The taxpayer has not cited any statute or regulation that would allow it to collect Indiana sales tax and delegate the duty to remit the tax. Under IC 6-8.1-5-1 the taxpayer bears the "burden of proving that the proposed assessment is wrong," and the "proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid." The taxpayer has not met its burden of proof.

In addition, from the file, it is not clear whether or not the taxpayer withdrew its protest of the issue involving use tax on mailings. At hearing the taxpayer did not develop any arguments on the issue. The taxpayer had previously submitted to the Department an invoice from a vendor to support its position. That invoice was for a later time than the audit period.

FINDING

Taxpayer's protest is denied.

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