DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0034
Sales Tax
Calendar Years 1994, 1995, 1996, 1997, and Partial Year Ended 04-30-98

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. **Selling at Retail** – Delivery charges

Authority: 45 IAC 2.2-4-3; 45 IAC 2.2-4-27

Taxpayer protests tax on delivery charges.

STATEMENT OF FACTS

Taxpayer has two business locations in Kentucky and is primarily in the business of renting commercial and industrial equipment including forklifts, cranes, manlifts, welders, compressors, backhoes, loaders, generators, and other miscellaneous items. Taxpayer also rents smaller, non-commercial items that are not delivered but picked up by its customers. Taxpayer normally does not furnish an operator with the equipment rental. The taxpayer delivers the heavy equipment to locations in Indiana. Taxpayer's customers are primarily construction contractors. Taxpayer also buys and sells some equipment that they do not deliver. The customers always pick up these items. Taxpayer also does service work.

Taxpayer submitted a protest dated January 4, 1999 with copies of invoices that it claimed were exempt. The file was returned to the auditor for verification. The auditor returned the file to the legal division without resolution. The Legal Division asked for additional information in letters dated May 16, 2001, and July 2, 2001 which also explained the reasons for the assessment. On September 21, 2001 a hearing was scheduled for October 9, 2001 which the taxpayer cancelled on September 26, 2001. The hearing officer verified the cancellation with a letter sent the same date and allowed an additional twenty days for proof of exemption. No response was received and the Department scheduled another hearing for February 5, 2002. The taxpayer did not call or appear at the hearing. The decision is based upon information contained in the file.

The audit assessed sales tax on taxable Indiana rentals including delivery charges. Taxpayer

was not registered to collect sales tax.

I. **Selling at Retail** – Delivery charges

DISCUSSION

Taxpayer states that delivery is exempt.

All elements of consideration are included in gross retail income subject to tax. 45 IAC 2.2-4-3 states that separately stated delivery charges are considered part of selling at retail and subject to sales and use tax if the delivery is made by or on behalf of the seller of property not owned by the buyer. 45 IAC 2.2-4-27 (c) states that gross receipts are subject to tax, i.e.; the amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deductions whatsoever for expenses or costs incidental to the conduct of the business.

In reviewing the audit report, the hearing officer found that the taxpayer was assessed sales tax on rental items plus delivery costs in accordance with 45 IAC 2.2-4-27(a)(1) that states that the amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deductions whatsoever for expenses or costs incidental to the conduct of the business. Taxpayer is partially sustained where tax was assessed on pickup and denied to the extent that sales tax was charged on delivery.

FINDING

Taxpayer's protest is partially sustained and partially denied.

DW/RAW/MR/dw 022103