DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-980517
Sales and Use Tax
For The Period: 1995 Through 1997

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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.

ISSUES

I. Sales and Use Tax: Capital Cost Reduction

Authority: IC 6-2.5-4-10; 45 IAC 2.2-4-27

The taxpayer protests the imposition of sales tax on the capitalized cost reduction of vehicle leases.

II. Sales and Use Tax: Consumable Materials

Authority: IC 6-2.5-2-1; IC 6-2.5-3-1

The taxpayer protests the taxation of materials used in painting and repairing automobiles.

III. Tax Administration: Penalty and Interest

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2; IC 6-8.1-10-1

The taxpayer protests the imposition of a penalty and interest on the assessment.

STATEMENT OF FACTS

The taxpayer is an automobile retailer and also has an automotive service repair center. The taxpayer sells new automobiles as well as used ones. The taxpayer's service repair center includes a body shop, which also sells automobile parts. More facts will be provided as needed below.

I. Sales and Use Tax: Capital Cost Reduction

DISCUSSION

The taxpayer did not collect sales tax on the non-cash capitalized cost reduction of vehicle leases. The Indiana Code defines a capitalized cost reduction as:

> "[C]apitalized cost reduction" means a payment made by cash, check, credit card debit, net vehicle trade-in, rebate, or other similar means in the nature of a down payment or credit, made by a retail lessee at the inception of a lease agreement, for the purpose of reducing capitalized

Indiana Code 9-23-2.5-3. The Indiana Administrative Code, 45 IAC 2.2-4-27(d)(1), states that sales/use tax is due on the gross receipts derived from the rental or leasing of tangible personal property. The auditor argues that sales/use tax must be collected on all lease payments—including capital cost reductions. The taxpayer argues that they were following the procedures outlined by the finance company, and depended upon the finance company for guidance. The taxpayer contends that it did not intentionally fail to collect the sales tax.

The Department's approach to capitalized cost reduction, which is in comportment with the law, was made known to the dealers' trade association. That approach is outlined in the finding below.

FINDING

The capital cost reduction before July 1, 1995, is not taxable. From July 1, 1995, the capital cost reduction *in toto* is taxable. For the period after July 1, 1997, the capital cost reduction represented by a trade-in of an owned vehicle is not taxable, any other form of capital cost reduction after July 1, 1997, is taxable. The audit division is requested to review the taxpayer's records to ascertain whether the taxpayer is in comportment with the above approach.

II. Sales and Use Tax: Consumable Materials

DISCUSSION

The taxpayer purchased consumable shop supplies and did not pay sales tax at the point of purchase. These items are varied, and include such items as sandpaper disks, tap cloth to wipe the cars down, spirit wipe, and masking paper. Rather than paying sales tax or remitting use tax, the taxpayer instead charged its customers the tax on the items. The taxpayer contends that the Department is trying to impose a double tax, since the tax was paid (albeit by the wrong party).
The Department is not imposing a double tax. The taxpayer is being taxed for what *it* owes in use tax

for the supplies. The taxpayer itself did not make any payment of tax—sales or use—on the supplies. Instead, the taxpayer *collected* tax paid by its customers, not the taxpayer itself, and remitted the payment as an agent of the state. The taxpayer's customers erroneously paid the tax, since the taxpayer is the final user of the items and customer does not become the owner of the supplies. The taxpayer states that this is not explicitly stated in the Indiana Code or the Indiana Administrative Code. The Department points out that its position is supported by both Codes. State sales tax and use tax operate in a complementary manner—generally, one applies or the other does. If sales tax is not paid, then use tax is due. Here, the taxpayer was not selling, as outlined by IC 6-2.5-2-1, thus the taxpayer should have paid sales tax at the point of purchase. Since the taxpayer did not, according to IC 6-2.5-3-1, use tax is due on the items.

The taxpayer further protests the imposition of tax on oil changes. Per the taxpayer, as part of buying or leasing a vehicle, the first oil change is in included in the deal. The taxpayer argues that tax is not due on the oil changes since the cost is reflected in the overall-selling price of the vehicle. The Department notes that the oil changes were not on the buyer's agreement, and that a separate certificate for the oil change was issued.

FINDING

The taxpayer's protest is denied.

III. Tax Administration: Penalty and Interest

DISCUSSION

Pursuant to Indiana Code section 6-8.1-10-2.1, the Department may waive an assessed penalty upon the taxpayer's affirmative showing of a reasonable cause for the failure to pay the proper tax. Regulation 45 IAC 15-11-2 also states:

> (b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

The Department finds that the deficiency was not due to reasonable cause. The taxpayer did not pay sales tax on such items as consumables and magazines, nor did the taxpayer collect use tax. In addition, the taxpayer protests the imposition of interest. Indiana Code 6-8.1-10-1(e) states that the Department may not "waive the interest imposed [in] this section."

FINDING

The taxpayer's protest is denied.