PLANTATION PONTIAC, CADILLAC, BUICK, GMC TRUCK, INC. Highway 431, North Eufaula, Alabama 36027,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. S. 94-236
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed State, Barbour County, and City of Eufaula sales tax against Plantation Pontiac, Cadillac, Buick, GMC Truck, Inc. ("Taxpayer") for the period April 1990 through March 1993. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on November 1, 1994. Stan Gregory and Pamela Mable represented the Taxpayer. Assistant Counsel Wade Hope represented the Department.

The Taxpayer is in the business of selling motor vehicles at retail in the City of Eufaula, Barbour County, Alabama. The Department audited the Taxpayer, and based thereon entered the final assessments in issue. The Taxpayer timely appealed to the Administrative Law Division.

The Taxpayer raises three issues on appeal:

(1) Are "documentation fees" received by the Taxpayer in conjunction with the sale of motor vehicles subject to sales tax;

(2) Is the Taxpayer liable for Barbour County and City of Eufaula sales tax on vehicles sold in Eufaula where the purchaser subsequently paid local tax in accordance

with Code of Ala. 1975, §40-23-104 when the vehicle was licensed in another county. (All municipal and county sales and use taxes are hereafter sometimes referred to as "local tax");

(3) Is the Taxpayer liable for State, Barbour County, and City of Eufaula tax on vehicles sold in Eufaula to purchasers residing outside of Alabama where the Taxpayer failed to obtain the necessary "drive-out certificate" from the purchaser as required by Code of Ala. 1975, §40-23-2(4) and Dept. Reg. 810-6-3-.42.03.

At the November 1, 1994 administrative hearing, the Taxpayer's attorneys also questioned generally the validity of the statute under which the Barbour County tax is levied. (R. 21-33). However, that issue was not addressed in the Taxpayer's brief. Consequently, I assume that the Taxpayer no longer wishes to pursue that issue.

(1) The "Documentation Fees".

The Taxpayer charged a $58.00 "documentation fee" to its customers during the audit period. In return, the Taxpayer prepared and processed the title work on the vehicle, recorded any outstanding liens, notarized and mailed the documents, and in some cases verified insurance coverage and actually applied for and picked up a tag for the customer. The Taxpayer claims that the fee was optional, although over 95% of its customers opted for the service. The $58.00 fee was separately stated on the bill issued to the customer.

The Taxpayer claims that the documentation fee is an optional fee for services performed in addition to and separate from the sale of the motor vehicle, and thus is not subject to sales tax. The Department claims that the documentation fee is derived from

the sale of the motor vehicle, and thus is taxable.

Sales tax is levied on the gross proceeds derived from the sale of tangible personal property. "Gross proceeds of sales" is defined at Code of Ala. 1975, §40-23-1(a)(6) as "the value proceeding or accruing from the sale of tangible personal property . . . without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, . . . or any other expenses whatsoever, . . .".

Alabama's courts have construed §40-23-1(a)(6) so that all "labor or service" performed by the seller as part of a retail sale must be included in the measure of the sales tax. See, East Brewton Materials, Inc. v. State, Dept. of Revenue, 233 So.2d 751 (1970); Dept. of Revenue v. Mary B. Montgomery, d/b/a J. S. Montgomery Awards and Engraving, Admin. Docket No. S. 94-132, decided December 29, 1994.

All licensed motor vehicle dealers, including the Taxpayer in this case, are by statute designated agents of the Revenue Department. See, Code of Ala. 1975, §32-8-34. As a designated agent, a dealer is required to process and mail to the Department various documents (certificate of title, manufacturer's statement of origin, etc.) relating to the title for the vehicle. See, Code of Ala. 1975, §§32-8-35(a) through (g).

In substance, the documentation fee charged by the Taxpayer is a fee for processing those documents that the Taxpayer is required by law to process. Preparing and processing the documents is a required and necessary "labor or service" performed by the Taxpayer relating to the sale of a motor vehicle, and thus constitutes a part of taxable gross proceeds subject to sales tax. The documentation fee is taxable even though the dealer may perform some extra services such as obtaining a tag or verifying

insurance for a customer that are not required by statute. The Taxpayer claims that the services are optional. However, it appears from a reading of §32-8-35 that a designated agent is required to process the paperwork for which the $58 fee is charged.

The above holding is supported by the rule of statutory construction that a long-standing interpretation by a government agency should be given favorable consideration. Robinson v. City of Montgomery, 485 So.2d 695 (Ala. 1986); Alabama Precast Products, Inc. v. Boswell, 357 So.2d 981 (Ala.Civ.App. 1977). That rule of course must be set aside if it is reasonably certain that the agency's interpretation is erroneous. However, the Department's long-standing position that documentation fees are a part of taxable gross proceeds is not erroneous and should be upheld.

(2) Vehicles sold in Eufaula for which the customers allegedly paid local tax when the vehicle was licensed in another county.

The Taxpayer concedes that it made numerous taxable sales in Eufaula on which local tax was not collected. However, the Taxpayer argues that Eufaula and Barbour County tax cannot now be assessed on those sales because the customers subsequently paid the local tax when they registered the vehicles in another county. The Taxpayer thus claims that a second local tax is prohibited by Code of Ala. 1975, §40-23-2.1.

I agree that because the Taxpayer failed to charge Barbour County and Eufaula tax when the vehicles were sold, the customers were obligated to pay local tax when they registered the vehicles in their home counties. Code of Ala. 1975, §40-23-104(a)(3) requires that the tax collector shall collect all "municipal and county use taxes . . . on sales made by licensed Alabama dealers where municipal and county sales taxes were not

collected at the time of purchase; . . .".

However, even if the Taxpayer's customers paid local use tax when they registered the vehicles in their home county (and there is no evidence that they did), the Taxpayer is still not relieved of liability for the Barbour County and Eufaula sales tax that accrued at the time of sale.

Section 40-23-2.1 provides that if a municipal or county sales or use tax is paid as required by law, then if the property is subsequently taken into another municipality or county it shall not be "subject to the use tax, regardless of rate, which is required by the second municipality (subparagraph (a)) or county (subparagraph (b)) . . .". The clear intent of §40-23-2.1 is that if local sales tax is properly paid at the time of sale, another local tax should not be collected when the property is taken into another municipality or county in Alabama for use, storage or consumption.

However, §40-23-2.1 was not intended and should not be construed to relieve a retail seller from liability for sales tax due on the initial taxable sale of tangible personal property. The vehicles sold by the Taxpayer in Eufaula were clearly subject to City of Eufaula and Barbour County sales tax at the time of sale. The Taxpayer cannot avoid that fixed liability by arguing that the customers later paid local use tax in another county. The specific language of §40-23-2.1 states that a second "use" tax shall not be collected if the property was previously taxed. It does not state the reverse that the initial sales tax is not due if the customer later pays local use tax in another county.

Section 40-23-2.1 does not provide a choice of where to pay local tax. The retail seller is liable in all cases. If the buyer also pays local tax under §40-23-104, then upon

proof that the seller has subsequently paid sales tax at the point of sale, the customer would be entitled to a refund. In that way, the local tax would not be paid twice.

If the Taxpayer's position is accepted, then a dealer and a customer that resides in another county would be allowed to pick and choose where to pay local taxes. If the local taxes in the dealer's county are higher than in the customer's home county, the parties could agree that the seller would not collect tax on the sale of the property and instead have the buyer pay the lower tax rate in his home county. Clearly that was not intended by the Legislature.

(3) The "Drive-Out Certificates".

The Department taxed numerous sales made in Eufaula to out-of-state customers because the Taxpayer failed to execute a "drive-out certificate" as required by Code of Ala. 1975, §40-23-2(4) and Dept. Reg. 810-6-3-.42.02.

Section 40-23-2(4) provides that an otherwise taxable sale of a motor vehicle in Alabama shall be exempt from Alabama sales tax if it is "removed from Alabama within 72 hours by the purchaser or his agent for use outside Alabama . . .". However, to be exempt, the seller and the customer must execute a drive-out certificate documenting that the vehicle was intended to be removed from Alabama within 72 hours. See, §40-23-2(4) and Dept. Reg. 810-6-3-.42.03.

The Taxpayer in this case failed to initially provide the necessary drive-out certificates for some of its sales involving out-of-state customers. However, the Taxpayer's attorney claims that the Taxpayer now has numerous additional drive-out certificates in its possession. The Taxpayer is accordingly allowed 30 days to submit all drive-out

certificates to Department Assistant Counsel Wade Hope. The Department should make all necessary adjustments, and thereafter inform the Administrative Law Division of the Taxpayer's adjusted liability. A Final Order will then be entered setting out the Taxpayer's adjusted liability. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered April 20, 1995.

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BILL THOMPSON
Chief Administrative Law Judge