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STATE OF ALABAMA              §          STATE OF ALABAMA
DEPARTMENT OF REVENUE,                   DEPARTMENT OF REVENUE
                              §    ADMINISTRATIVE LAW DIVISION

      v.                      §       DOCKET NO. S. 88-110

STAR VIDEO, INC.              §
7761 Airport Boulevard
Mobile, AL  36609,            §

          Taxpayer.           §
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## ORDER

The Revenue Department entered two assessments against Star Video, Inc. ("Taxpayer") for lease tax and sales tax for the period July 1, 1984 through June 30, 1987.  The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on November 15, 1988.  Messrs.  Scott Escobia and Tony Olmstead appeared for the Taxpayer.  Assistant counsel Sam Clenney, III represented the Department.  Based on the evidence presented in the case, the following findings of fact and conclusions of law are hereby entered.

## FINDINGS OF FACT

The Taxpayer is in the business of selling and leasing video tapes. The Department audited the Taxpayer and entered preliminary assessments of lease tax and sales tax for the period July 1, 1984 through June 30, 1987.  The lease tax assessment is uncontested.  However, the Taxpayer disputes the sales tax assessment concerning the taxability of tape exchanges made as part of a tape exchange program conducted by the Taxpayer during the period in question.

The video exchange program was conducted as follows: An exchange

program customer was required to initially purchase a video tape for $75.00. The customer could then return the tape at any time, pay a $20.00 exchange fee, and select another tape of his choice. The customer was free to keep the first tape or any subsequent tape selected in the program. There was no minimum or maximum number of exchanges required or allowed.

The Department assessed sales tax on the exchange program transactions as follows: The gross dollar amount of exchange program proceeds was divided by $20.00 (representing the standard fee per transaction) to arrive at the actual number of exchanges in a given year. The number of exchanges was then multiplied by the average value of a used video tape. The average tape value as provided by the Taxpayer was $27.50 in 1984, $22.50 in 1985 and $19.00 in 1986. The totals were included as taxable gross proceeds. The $20.00 exchange fee was not included as part of said gross proceeds.

## CONCLUSIONS OF LAW

The issue in dispute is whether the tape exchanges constituted taxable sales, and if so, in what amount.

An exchange or swap of tangible personal property constitutes a sale under the Alabama sales tax laws. Code of Ala. 1975, §40-23-1(a)(5) defines "Sale or Sales" as "[I]nstallment and credit sales and the exchange of properties as well as the sale thereof or money, every closed transaction constituting a sale." (emphasis

added).  Department Reg. 810-6-1-.150 supports the above statute by holding in part that "[E]ach transaction whereby property is transferred from one owner to another constitutes a sale. . . .".

The taxable gross proceeds or gross receipts derived from an exchange of property is "[T]he value proceeding or accruing from the sale of tangible personal property", see Code of Ala. 1975, §§40-23-1(a)(6) and (8), respectively.  Department Reg. 810-6-1-.22 also provides in part as follows:

> (1) The money value allowed for property received and exchanged for other property constitutes payment or partial payment of the purchase price and must be included in the measure of the sales tax.

In the present case, the exchange of a new movie video by the Taxpayer in return for the customer's used movie video plus a $20.00 exchange fee constituted a sale of tangible personal property subject to sales tax.  The correct taxable measure is the value received by the Taxpayer, which includes the fair market value of the used tape plus the $20.00 exchange fee.  The value of the used videos was properly determined by the Department to be the average value per year as provided by the Taxpayer.

The above considered, both assessments in issue should be made final as entered by the Department, with interest as required by statute.

Done this 22nd day of December, 1988.

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BILL THOMPSON
Chief Administrative Law Judge