STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

V. T. LEASING,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. 95-0021
	)	
DEPARTMENT OF REVENUE,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice, this cause came on for formal hearing before P. Michael Ruff, duly-designated Hearing Officer of the Division of Administrative Hearings, on April 9, 1996, in Pensacola, Florida.

APPEARANCES

For Petitioner: Mr. Constantine S. Valmus
12346 Ailanthus Drive
Pensacola, Florida 32506

For Respondent: Mark T. Aliff, Esquire
Office of the Attorney General
The Capitol - Tax Section
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUES

The issues to be resolved in this proceeding concern whether the Petitioner should be assessed for use taxes, interest and penalties related to the purchase of certain fuel-pumping equipment, on which sales tax was allegedly unpaid to the supplier. It must also be determined whether the placement of storage tanks, pumps, and appurtenant fueling equipment at the Destin Marina constituted a license or lease of the real property upon which that equipment was placed and, therefore, whether the $.15 per gallon fee paid to the marina owner for pumping and selling the Petitioner's fuel should have been the subject of sales tax or, conversely, whether the placement of the pumping equipment and fuel at the marina site was a bailment, for purposes of the rule cited below and, therefore, a non-taxable transaction.

PRELIMINARY STATEMENT

This cause arose upon the assessment of the Petitioner by the Respondent agency for use and sales taxes attendant to the purchase of tanks, pumps, and appurtenant equipment by the Petitioner from a supplying company and the placement of that equipment at the Destin Marina for purposes of dispensing and selling of fuel delivered to the marina by the Petitioner. The Respondent maintains that use taxes are due from the Petitioner for the purchase of the tanks, pumps, and related equipment from the supplier company, because it

maintains no sales tax was ever paid on that transaction to the supplier company. The Respondent also maintains that sales tax is due on the $.15 per gallon commission paid by the Petitioner to the ownership of Destin Marina for the license, privilege, or lease involved, according to the Respondent's view of the transaction, in the placement of the tanks, pumps, and fuel at the Destin Marina site for use in the sale of fuel to the marina's customers.

The Petitioner contested the determination to this effect by the Respondent and was granted the right to a hearing, pursuant to Section 120.57, Florida Statutes. The Petitioner maintains that it paid sales tax, included in the equipment price, to the Panhandle Pump Company from which it bought the subject equipment and, therefore, owes no use tax on that transaction. The Petitioner also maintains that it was merely paying the ownership of the Destin Marina for the service of pumping and selling the fuel for it at the marina site and that no lease of the real property upon which the pumping equipment is situated at the marina was contemplated between those two parties. Rather, the Petitioner asserts that the arrangement between the Petitioner and Destin Marina constituted a bailment of the equipment, appurtenances and fuel involved, for the mutual benefit of the Petitioner and the Destin Marina.

The cause came on for hearing as noticed. Joint Exhibit 1, as well as Petitioner's Exhibits 1-5 were admitted into evidence, without objection. Additionally, the Respondent's senior auditor, Donald Edward Henderson, testified on behalf of the Respondent; and the Petitioner testified on his own behalf. Upon concluding the proceeding, the parties requested an extended period of time to submit Proposed Recommended Orders and also requested that a transcript be filed. The Proposed Recommended Order of the Respondent was timely filed and is treated in this Recommended Order and the findings of fact proposed are additionally ruled upon in the Appendix attached hereto and incorporated by reference herein.

FINDINGS OF FACT

1. The Petitioner, V.T. Leasing, at times pertinent hereto, was a partnership with partners, Mr. C. S. Valmus and George Threadgill. It was created at the request of Mr. William Ming, who was the owner of Destin Marina at times pertinent hereto. Mr. Ming had agreed to purchase marine fuels from the wholesale fuel dealership maintained by Mr. Valmus and Mr. Threadgill, but needed another entity to purchase and have installed the necessary tanks, pumps and appurtenances at his marina.

2. Consequently, in order to effect their arrangement, a contract was drafted and executed between Mr. Valmus and Mr. Threadgill on behalf of the Petitioner herein, and Mr. Ming on behalf of the Destin Marina.

3. That contract provided by its term that the Petitioner, the "supplier", and Destin Marina, the "buyer", would engage in a business relationship whereby the supplier agreed to furnish and install the equipment necessary for the buyer to be able to operate a marina fueling facility, including gasoline and diesel (fuel). The Petitioner agreed to furnish dispensers, hoses, tanks, piping, and related equipment and appurtenances necessary for self-service sales and to keep an adequate supply of fuel and inventory at the marina for sale to marina customers. Destin Marina agreed to use its best efforts to sell the fuel for which it would be paid a commission of $.15 per gallon for each gallon of fuel sold. The Petitioner agreed to check the tanks periodically and see that the tanks were kept filled and to determine the amount of gallons of fuel sold,

whereupon the Petitioner would collect from Destin Marina all monies and valid credit card vouchers for the retail sales, less the $.15 commission due to the marina.

4. The Petitioner was to retain ownership of the fuel, the money and credit card vouchers for fuel sold and would set the retail selling price for the fuel. The contract was to extend for five years from the date of its execution with extensions being provided for thereafter. The Petitioner, in the contract, was granted a right of ingress and egress to the marina property to deliver fuel, collect for fuel, and to remove any equipment not paid for under the terms of the contract. Destin Marina agreed not to encumber the equipment or consigned fuel inventory owned by the Petitioner. The Petitioner was responsible for reporting and paying all taxes on fuel sold. There is no dispute concerning any fuel taxes due in this proceeding.

5. The agreement further provided that, should the marina be closed for 90 consecutive days, except due to an act of God, Destin Marina agreed to pay for the equipment at a schedule set forth in the agreement, if so demanded by the Petitioner. The amount due under that contingency for the first year would be $47,000.00 and declined every year thereafter to a valuation of $27,000.00 in the fifth year of the agreement's operation. At the end of the agreement's term, the equipment would become the property of Destin Marina, the Petitioner taking the position that due to exposure to the elements and salt water, at the end of five years, the equipment would be worth little to it.

The Panhandle Pump Transaction

6. In order to fulfill its responsibilities under the above-discussed agreement, the Petitioner purchased the pumps, tanks, piping, and other related equipment necessary to install the fueling station at the marina from the Panhandle Pump Company (Panhandle). The Petitioner produced at hearing various invoices showing gross dollar amounts paid to Panhandle for the equipment involved in this proceeding. Those invoices do not indicate whether any sales tax was paid to Panhandle on the purchase of the equipment. Prior to this hearing, the Respondent attempted to ascertain whether sales tax had been paid, and in what amounts, from the Petitioner and apparently made at least one inquiry of Panhandle in an effort to find out if sales tax had been paid to Panhandle, as well as the total amount paid for the equipment by the Petitioner.

7. Witness Henderson, the auditor for the Respondent in this matter, established that he was unable to determine the original cost of the equipment paid to Panhandle by the Petitioner. In that event, the Respondent used the provision of Section 212.12(6)(d), Florida Statutes, as the basis for its audit, which provides that if the taxpayer cannot or does not supply original cost and tax information concerning a transaction, then the "best information available" may be used.

8. During an audit, the Respondent is not required to inquire of third parties with respect to the tax liability of an audited taxpayer. This is because the auditor for the Respondent is not free to initiate an audit of a third party in order to confirm or deny information provided by the taxpayer. Any inquiry into another taxpayer's tax records can only be done under strict compliance with the confidentiality requirements in Section 213.053, Florida Statutes.

9. The Respondent was unable to determine the price which the Petitioner paid for the equipment. The Respondent requested the information pertaining to

the equipment price of the Petitioner and even requested a copy of the sales invoice for the pumps from Panhandle itself, but neither the Petitioner nor Panhandle ever supplied that information prior to hearing. During the hearing, the Petitioner's evidence in the form of the invoices only shows the gross amount paid for the equipment and does not depict what, if any portion of that, might have been sales tax. It does not show that sales tax was paid on the equipment. Only the Petitioner's testimony, through Mr. Valmus, asserts that the sales tax on the equipment was paid to Panhandle. Mr. Valmus states that he is certain that the prices shown on the invoice included sales tax, but he presented no substantiating evidence for that statement.

10. Because the sales tax has not been shown to have been paid on the purchase of the tanks, pumps and other equipment from Panhandle, the Petitioner, the purchaser of the equipment, was assessed use tax. The Respondent, however, because the exact price could not be determined, used the valuation placed on the equipment in the first year "buy out" figure depicted in the agreement between the Petitioner and Destin Marina (Mr. Ming). That value of $47,000.00 is thus based upon the valuation of the equipment set by the parties to that agreement themselves. This valuation was the only readily identifiable figure by which to value the transaction between Panhandle and the Petitioner.

11. It would be unreasonable to require the Respondent to supply the missing parts of the taxpayer's records, in order to arrive at a valuation figure for purposes of calculating tax due. This would encourage fraud and tax evasion if taxpayers were allowed to benefit from inadequate records. If in doubt, a taxpayer could simply lose or misplace records and propose a more advantageous number to the Respondent, and the Respondent would be forced to attempt to disprove that contention.

12. The only records of this transaction, the receipts for the partial payments to Panhandle, support the conclusion that the tax was not paid. Section 212.01(2), Florida Statutes, requires that receipts for purchased items separately state the sales tax paid. Since this was not done, the Respondent concluded justifiably, in the absence of other records, that no sales tax was paid on the transaction. Consequently, it has assessed use tax on the Petitioner, the purchaser of the equipment from Panhandle.

The Destin Marina Transaction

13. Pursuant to the terms of the exclusive supply and purchase contract, referenced in the above findings of fact, the Petitioner agreed to furnish, install and maintain the fuel-pumping equipment to be located at the Destin Marina on property owned by the Destin Marina or Mr. Ming. The Petitioner also agreed to insure an adequate supply of fuel inventory at the marina for sale to boating customers. The Petitioner agreed to gauge the tanks every two weeks, determine the amount of gallons sold, and collect all monies and credit card vouchers, less the $.15 commission to be paid to the Destin Marina operator, Mr. Ming. The Destin Marina, Mr. Ming or his agents, were responsible for actually dispensing the fuel from customers and collecting monies or credit card vouchers from customers in payment for the fuel. The agreement further provided that at the end of the five-year period, the depreciated equipment would become the property of Mr. Ming and/or the Destin Marina. The Petitioner owned and depreciated the equipment on its books and records during the term of the agreement. Due to salt water corrosion, the equipment would be of little value after the five-year period.

14. The Petitioner serviced and maintained the equipment subject to the agreement between it and Destin Marina. It never relinquished exclusive control of the equipment to the Destin Marina. The agreement between Destin Marina and the Petitioner specifically states that the "supplier" (the Petitioner) should at all times have the right of ingress and egress to the marina property to deliver fuel, collect for the fuel, or to remove any equipment not paid for under the conditions of the contract. The overall terms of the agreement show that the right of access, or "ingress and egress", for those purposes, also included the right for the Petitioner to come on the premises to service the equipment. The marina, however, operated the equipment during dispensing of fuel, on a day-to-day basis. Thus, the evidence shows that the two parties to the agreement had joint control over the equipment.

15. The Respondent showed, through the testimony of its auditor, Mr. Henderson, that the amounts assessed against the Petitioner, at the time of hearing, were for use tax on the equipment of $2,820.00, and tax on the fuel commissions of $2,638.07, for a total of $5,458.07. A penalty was assessed in the amount of $1,364.52, and interest accrued through April 15, 1994 amounted to $3,174.48, for a grand total of $9,997.07, with interest accruing from April 15, 1994 at $1.79 per day. The use tax on the equipment referenced herein concerned the transaction involving the equipment purchase from Panhandle.

16. The Respondent determined that the agreement between the Petitioner and Destin Marina, whereby the Petitioner would pay a $.15 commission per gallon to the marina, constituted a "license to use real property", pursuant to Section 212.031, Florida Statutes, and Rule 12A-1.007, Florida Administrative Code. Although the parties were not shown to have intended that this arrangement amount to a lease agreement, the Respondent interpreted the agreement in that fashion and assessed sales tax due on the $.15 per gallon commission amounts paid to Destin Marina, as if they were lease rental. This is related to the Respondent's position that the arrangement could not constitute a bailment because the Petitioner maintained control over the property for the life of the agreement, never gave up title to it, performed all maintenance and depreciated the equipment on its books and records during the five-year period of the agreement. Moreover, at the end of the agreement, the property would not revert back to the possession of the Petitioner but, rather, to the ownership and possession of the Destin Marina. Although it is not found that exclusive control of the equipment remained in the Petitioner, the parties did at least have joint control over the equipment, rather than exclusive control being delivered to the Destin Marina, the putative bailee.

CONCLUSIONS OF LAW

17. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. Section 120.57(1), Florida Statutes.

18. Section 120.575(2), Florida Statutes, provides that the Respondent's burden of proof is limited to a showing that an assessment has been made against the taxpayer and its factual and legal basis. Once that demonstration has been made, the burden shifts to the taxpayer, the Petitioner, to demonstrate by a preponderance of the evidence that the assessment is incorrect. See, Department of Revenue v. Nu-Life Health and Fitness Center, 623 So.2d 747, 751-752 (Fla. 1st DCA 1992).

19. The Petitioner, with regard to the transaction with Panhandle, failed to maintain or to supply adequate records, as required by Section 213.35,

Florida Statutes (1991). See, also, Rule 12A-1.093, Florida Administrative Code. When a person or dealer, in the status of the Petitioner, fails to make available records for purposes of audit by the Respondent, it is the duty of the Respondent to "make an assessment from an estimate based upon the best information then available to it for the taxable period." Section 212.12(5)(b), Florida Statutes (1991).

20. The record evidence reflects that the only identifiable figure by which to value the transaction with Panhandle is that figure which Destin Marina agreed to pay the Petitioner, if the buy-out provision of the Destin Marina/V.T. Leasing contract came into play in its first year. It would be an unreasonable requirement to place the burden upon the Respondent to supply missing parts of the taxpayer's records. This would encourage fraud and tax evasion if taxpayers were allowed to benefit from inadequate records. If in doubt, a taxpayer could simply "lose" records and propose a more advantageous number to the Respondent, and it would be up to the Respondent to disprove that contention. This requirement runs contrary to the present statutory scheme, which places the burden of keeping adequate records on the party best equipped to do so, the taxpayer. See Sections 212.13, 212.15(1), and 213.35, Florida Statutes.

21. The evidence shows that the Respondent made an effort to ascertain the price of the equipment purchased from Panhandle by requesting a copy of the sales contract from both parties to that transaction, without success. The only records of the transaction, the receipts or invoices for the partial payments made, support the conclusion that the tax was not paid. Section 212.01(2), Florida Statutes, requires receipts to separately state the sales tax paid. These receipts in evidence contain no entry for sales taxes. Therefore, the Respondent was justified in concluding that no sales tax was paid on this transaction and assessing the use tax. The Petitioner did not meet its burden of proof to overcome the prima facie correctness of that assessment under the above statutory authority.

22. The Petitioner, as a partnership doing business in Florida, was required to maintain adequate books and records, according to Section 212.13(1), Florida Statutes. This the Petitioner failed to do. In particular, the Petitioner was obligated to keep the complete records concerning tangible personal property received for the potential audit period, which it failed to do, or at least failed to produce. See Sections 212.13(2) and 215.35, Florida Statutes. Thus, the Respondent had no choice under these circumstances but to apply tax based upon the only valuation figure it had, the first year buy-out figure of $47,000.00, agreed to in the contract between the Petitioner and Destin Marina. Under the circumstances, this decision was reasonable, supported by statute, and is a reasonable figure upon which to base the use tax assessed by the Respondent.

The Marina Transaction

23. The Respondent maintains that the arrangement with Destin Marina amounted to a lease of the real property on which the Petitioner's pumps and equipment were placed for purposes of dispensing and sale of the Petitioner's fuel, although that was not actually the intent of the parties. The lease payments were imputed by the Respondent to constitute the $.15 per gallon commission paid to the Destin Marina for the service of dispensing the Petitioner's fuel to marina boating customers.

24. The Petitioner maintains that the contractual relation between those parties was a bailment.

25. Volume 5, Fla. Jur. 2d, Section 1, "bailments" provides:

> A bailment is a contractual relation governed by the same rules as are other contracts. It is a consensual transaction and requires complete delivery of the subject matter of the bailment by the bailor to the bailee, and acceptance thereof by the bailee. . . .
>
> The 'bailee' is the person who receives the possession or custody of property under circumstances constituting a bailment, and the 'bailor' is the person from whom the property is received. . . . In a bailment, possession of the property bailed is severed from the ownership, the bailor retaining general ownership and the bailee receiving lawful possession or custody for the specific purpose of the bailment. Furthermore, a bailment contemplates return of the property, although, under some circumstances, the return of a substitute for the article may be sufficient.

See, also, cases cited therein.

26. Here, the supposed bailment did not involve transfer of exclusive possession of the property bailed to the bailee, Destin Marina. Thus, possession of the property bailed was not completely severed from ownership. The bailor not only retained general ownership but also had most of the indicia of control and possession of the property, while it sat on Destin Marina's docks for purposes of dispensing fuel. Destin Marina had custody and control to the extent that, on a daily basis, its personnel operated the pumps and dispensed and sold the fuel on behalf of the Petitioner. Moreover, the agreement between those two parties did not contemplate return of the property to the title owner, the Petitioner, as would be the case in a true bailment. Rather, the property was to become the titled property of Destin Marina at the end of the five-year period of the agreement.

27. To some extent, the arrangement between these parties appears like that of a "bailment for mutual benefit". A typical bailment for mutual benefit occurs where one person, for compensation, takes another's property into his care and custody. The element of compensation is an essential requirement in every bailment for mutual benefit, although there need not be an expressed stipulation if the transaction itself shows that a recompense for the transfer of custody, care and possession is contemplated by the parties. A typical example of a bailment for mutual benefit which is somewhat analogous to the circumstances prevailing in the instant case, is that occurring in Fort Pierce Gas Company v. Toombs, 193 So.2d 669 (Fla. 4th DCA 1966), quashed on other grounds (Fla.) 208 So.2d 615. In that case, when a propane gas storage tank was delivered and located at the residence of a homeowner, in order to facilitate the gas company being able to sell and distribute a supply of gas to the homeowner for use in his home gas appliances, the relationship between the gas company and the homeowner, with reference to the possession and use of the tank was held to be that of bailor and bailee, the bailment being for the mutual benefit of the parties. The homeowner received the benefit of having a supply of gas to operate his home appliances, for which he paid the gas company, and

the gas company received the benefit of having the facility available to the homeowner so that the gas company could sell its gas for profit.

28. Thus, under the above Findings of Fact, it can be seen that some of the mutual benefit elements of such a bailment are present in this case. However, the transaction between these parties does not comport with the requirements of the Respondent's "bailment rule". That rule, 12A-1.070(22)(a)-(e), Florida Administrative Code, contains the definitional standards by which a transaction is determined to be either a bailment or some other contractual agreement, such as a lease or license. If the transaction is not deemed a bailment, it is not exempt from taxation, and the payments rendered to the party, situated as is the Destin Marina, are determined to be lease payments and thus subject to sales tax. The rule provides as follows:

> (22)(a) When tangible personal property is left upon another's premises under a contract of bailment, the bailee is not exercising a privilege taxable under the provisions of s. 212.031, F.S., relating to leases, licenses, or rentals of real property.
>
> (b) A bailment is a contractual agreement, oral or written, whereby a person (the bailor) delivers tangible personal property to another (the bailee) and the bailor for the duration of the relationship relinquishes his exclusive possession, control, and dominion over the property, so that the bailee can exclude, within the limits of the agreement, the possession of the property to all others. If there is no such delivery and relinquishment of exclusive possession, and the owner's control and dominion over the property is not dependent upon the cooperation of the person on whose premises the property is left, and his access thereto is in no wise subject to the latter's control, it will generally be held that such person is a tenant, lessee, or licensee of the space upon the premises where the property is left.
>
> 1. Example: A safety-deposit box in a bank or vault is a bailment, not a lease or license, because the bank has one key and the customer another and both are necessary to gain access to the box.
>
> 2. Example: An airport locker is not a bailment, but a lease or license, because the renter has the key and sole access to the stored property.
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> 3. Example: The charge made for the use of a frozen food locker in cold storage or locker plants is exempt under conditions which require the facility owner's presence and assent for the food owner to access his property.
>
> (c) A person who merely grants storage space without assuming, expressly or implied, any duty or responsibility with respect to the care and control of the property stored is a landlord of

> a person granted a right to occupy or use such real property and is not a bailee. Thus, the person granting the right to use such store space is exercising a privilege taxable under the provisions of s. 212.021, F.S., as a lease or license.
>
> (d) A lease, license, or bailment is indicative of a contractual relationship, and the terms are not mutually exclusive. Whatever label is attached to a contract, in determining whether a transaction is a bailment or a lease or a license, consideration will be given to the manifested intention of the parties as to which relationship has been created.
>
> (e) In the absence of an express contract, the creation of a bailment requires that possession and control pass from the bailor to the bailee; there must be full transfer, actual or constructive, so as to exclude the property from the possession of the owner and all other persons and give the bailee sole custody and control for the time being.

29. The transaction between the Petitioner and Destin Marina did not involve delivery and relinquishment of exclusive possession and control by the owner, the Petitioner, to Destin Marina, the putative bailee. The owner's control and dominion over the property was not shown to be "dependent upon the cooperation of the person" on whose premises the property was left. Access to the property, the pumps, etc., was in no wise subject to Destin Marina's control. Destin Marina contracted away the right to control access to the premises, for purposes of gaining access to the pumping equipment and the fuel left on the premises by the Petitioner, by contracting that the Petitioner had the right to such access and control over the equipment in their written agreement. Under that circumstance, where the person situated as Destin Marina does not control access, possession and dominion over the property exclusively, then such agreements are generally held to be leases or licenses and the person situated as the Petitioner becomes an effective tenant, lessee or licensee of the space on the premises where the property is left; in other words, the space where the pumps are situated at the Destin Marina.

30. The above Findings of Fact show that the parties possessed and controlled the equipment, the fuel and the dispensing of it, jointly. Thus, although some court decisions might well hold this to be a bailment for mutual benefit (in which case, the $.15 per gallon commission would not be subject to taxation), the stricter standard in the above-quoted rule shows that, because exclusive possession and control over the bailed property was not delivered to Destin Marina and because the agreement removed access to the property from Destin Marina's control, the arrangement cannot be held to be a bailment. Rather, it amounted effectively to a lease arrangement for the property upon which the pumping facility was installed and placed.

31. In summary, the Respondent's position regarding the sales commission agreement with Destin Marina is a reasonable one in treating it as a lease. While the parties clearly did not actually intend that the arrangement should constitute a lease of the space on which the fueling facility was installed, one must look to the nature of the transaction and not to the label placed upon it by the parties in making such a determination. See, Regal Kitchens, Inc. v. Department of Revenue, 641 So.2d 158 (Fla. 1st DCA 1994).

32. The transaction cannot be deemed to be a bailment. The equipment was never exclusively possessed and controlled by Destin Marina. Primary control was maintained by the Petitioner until the agreement ended and title to the equipment passed to Destin Marina. The property was not contemplated by the parties to be returned to the Petitioner, at the end of the agreement, as would be the case in a true bailment. Once the written agreement was entered into, and thereafter, the Petitioner did not need the cooperation of Destin Marina in order to maintain its control over the equipment and fuel.

33. Accordingly, the Respondent's prima facie case in favor of the assessment of taxes, interest and penalties referenced in the above Findings of Fact, has not been rebutted by preponderant evidence adduced by the Petitioner. Therefore, the assessment has been established to be correct.

RECOMMENDATION

Having considered the foregoing Findings of Fact, Conclusions of Law, the evidence of record, the candor and demeanor of the witnesses, and the pleadings and arguments of the parties, it is

RECOMMENDED that a Final Order be entered by the Department of Revenue upholding the assessment of V.T. Leasing for sales and use tax, as well as applicable interest and penalties, as set forth in the above Findings of Fact and Conclusions of Law.

DONE AND ENTERED this 1st day of August, 1996, in Tallahassee, Florida.

P. MICHAEL RUFF, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of August, 1996.

APPENDIX TO RECOMMENDED ORDER

The Petitioner submitted no Proposed Recommended Order.

Respondent's Proposed Findings of Fact

1-27. Accepted.

COPIES FURNISHED:

Mr. Constantine S. Valmus
12346 Ailanthus Drive
Pensacola, FL 32506

Mark T. Aliff, Esquire
Office of the Attorney General
The Capitol - Tax Section
Tallahassee, FL 32399-1050

Linda Lettera, General Counsel
Department of Revenue
204 Carlton Building
Tallahassee, FL 32399-0100

Larry Fuchs, Executive Director
Department of Revenue
104 Carlton Building
Tallahassee, FL 32399-0100

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit to the agency written exceptions to this Recommended Order. All agencies allow each party at least ten days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the Final Order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.