STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SPECTRAMIN, INC.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 04-0549
	)	
DEPARTMENT OF REVENUE,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on June 14, 2004, by video teleconference, with the Petitioner appearing in Ft. Lauderdale, Florida, and the Respondent appearing in Tallahassee, Florida, before Patricia Hart Malono, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: Joseph C. Moffa, Esquire
Law Offices of Moffa & Gainor, P.A.
One Financial Plaza, Suite 2202
100 Southeast Third Avenue
Ft. Lauderdale, Florida 33394

For Respondent: Carrol Y. Cherry, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

Whether the Petitioner owes sale and/or use tax for the purchase/lease of magnetic tapes containing mailing lists used by the Petitioner in its mail order business, as set forth in the Notice of Decision dated December 10, 2003, and, if so, the amount owed.

PRELIMINARY STATEMENT

In a Notice of Decision dated December 10, 2003, the Department of Revenue ("Department") notified Spectramin, Inc. ("Spectramin"), that, in response to Spectramin's protest letter dated March 31, 2003, the Department had sustained its sales and use tax assessment in the amount of $150,797.43, plus interest, for the period extending from September 1, 1996, through August 31, 2001 ("Audit Period"). The Department advised Spectramin that it had been assessed the additional sales and use tax because it had failed to pay such taxes on its purchase/lease of magnetic tapes that were digitally encoded with mailing lists used in its mail order business. Spectramin timely filed a Petition for a Chapter 120 Hearing, and the Department transmitted the matter to the Division of Administrative Hearings for assignment of an administrative law judge. After one continuance, the formal hearing was held on June 14, 2004.

At the hearing, the Department presented the testimony of Maria Ruckdeschel and Joseph Franklin, and Department Exhibits 1 through 17 were offered and received into evidence; Department Exhibit 17 consists of the transcript of the deposition of Leonard Edelman. Spectramin presented the testimony of its president, Leonard Edelman; it did not offer any exhibits into evidence.

The one-volume transcript of the proceedings was filed with the Division of Administrative Hearings, and the parties timely filed proposed findings of fact and conclusions of law, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, including the Joint Pre-Hearing Stipulation, the following findings of fact are made:

1. The Department is the agency authorized to administer the tax laws of the State of Florida. See § 213.05, Florida Statutes (2004).

2. At the times material to this proceeding, Spectramin was a Florida "S" corporation whose home office and principal place of business was located at 5401 Northwest 102 Avenue,

Suite 119, Sunrise, Florida. Spectramin was a Florida-registered sales tax dealer.

3. On October 19, 2001, the Department issued to Spectramin a Notification of Intent to Audit Books and Records for audit number A0127016590, which was a sales and use tax audit covering the Audit Period. On January 15, 2002, the Department and Spectramin signed an audit agreement that delineated the procedures and sampling method to be used by the Department for the audit. Because Spectramin's books and records were voluminous, the Department and Spectramin agreed to employ certain specified sampling procedures.

4. For the audit, the Department examined Spectramin's purchase invoices, general ledgers, and income statements for the 2000 calendar year.

5. At the times material to this proceeding, Spectramin was a mail-order company that sold nutritional supplements throughout the United States. It engaged in direct marketing of its products and employed two methods of direct marketing: Self-mailers were sent to prospective customers, and catalogs were sent to persons who had purchased its products, as a means of educating these buyers and converting them into repeat customers.[1]

6. In order to send self-mailers to prospective customers, Spectramin leased mailing lists consisting of names and

addresses, and, in some instances, bar codes, compiled by various vendors who sold mailing lists. The contents of the mailing lists were based on demographic criteria specified by Spectramin. Under the terms of the lease, Spectramin was allowed to use the mailing list for only one mailing.

7. Pertinent to this proceeding, Spectramin received some of the mailing lists in the form of data digitally encoded on magnetic tapes. The cost of leasing a mailing list was based on the number of names on the list, and the invoice for a list included a separately-stated, standard charge of $25.00 to cover the cost of the magnetic tape containing the data. The magnetic tapes themselves had no value to Spectramin; the only value of the tapes to Spectramin lay in the data encoded on the tapes, and the greatest part of the cost of the one-time lease was the cost of the data encoded on the magnetic tapes; for example, Spectramin paid $75.00 per 1,000 names for one of the mailing lists it leased, plus the $25.00 charge for the magnetic tape.

8. Spectramin did not pay sales tax in Florida on the cost of the data encoded on the magnetic tapes at the time it leased the mailing lists.

9. Spectramin did not have the computer equipment necessary to read the data on magnetic tapes, so it contracted with third-party letter shops and printers to process the magnetic tapes. The letter shops with which Spectramin has done

business since 1991 are all located outside the state of Florida.

10. Once a letter shop received magnetic tapes from Spectramin, the data on the tapes were downloaded to a computer, and cleaned, and sorted into usable names and addresses; the letter shop then sent the cleaned and sorted data to a print shop, which printed the names and addresses onto self-mailers provided by Spectramin. The letter shop sorted the self-mailers by zip code and mailed them. All of these operations took place outside Florida.

11. At one time, Spectramin's practice was to have the mailing-list vendors ship the magnetic tapes encoded with the data directly to a letter shop specified by Spectramin. The letter shop held the Spectramin magnetic tapes until it had accumulated several tapes, and then it would process the data from the tapes, have the names and addresses printed on the self-mailers, and mail the self-mailers. Spectramin found that the letter shops with which it did business sometimes lost track of the tapes received for Spectramin's mailings, and it cost Spectramin additional time and money to track down the tapes or to purchase mailing lists. Because of the additional time and money Spectramin spent to track down the lists, it stopped having the magnetic tapes sent directly to the letter shop.

12. At the times material to this proceeding, the magnetic tapes containing the digitally-encoded mailing lists were shipped directly to Spectramin by the mailing-list vendors, and Spectramin took delivery of the tapes at its principal place of business in Florida. The vendors sent the mailing lists to Spectramin's Florida office by overnight delivery through either Federal Express or United Parcel Service.

13. It was Spectramin's usual business practice for an employee to take delivery of the magnetic tapes containing the mailing lists and to place them on a shelf in the front of the office. The boxes containing the magnetic tapes were not opened. When Spectramin had accumulated several boxes of magnetic tapes, an employee put the boxes into a larger box and sent the tapes by overnight delivery to one of the out-of-state letter shops with which Spectramin did business. Spectramin did not keep the tapes in its Florida office more than one or two days because the mailing lists it had leased lost their value with time.[2]

14. The only value of the magnetic tapes was in the names and addressed encoded on the tapes, and the only use to which Spectramin put the data was to cause the names and addresses it had leased to be printed on self-mailers and mailed to the prospective customers. Because the letter shops that printed the names and addresses and mailed the self-mailers were located

outside of Florida, Spectramin did not "use" the data or the magnetic tapes in Florida. The only contact the magnetic tapes had with Florida was during the short period of time the tapes sat on the shelf at Spectramin's office before being shipped out of the state for processing.

15. Spectramin did not pay use tax in Florida on the cost of the data encoded on the magnetic tapes.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 72.011(1)(a), 120.569 and 120.57(1), and 120.80(14)(b), Florida Statutes (2004).

17. The Department's burden of proof in cases in which a taxpayer challenges the validity of a sales and use tax assessment is set forth in Section 120.80(14), Florida Statutes (2004), which provides in pertinent part:

> (a) *Assessments*.--An assessment of tax, penalty, or interest by the Department of Revenue is not a final order as defined by this chapter. Assessments by the Department of Revenue shall be deemed final as provided in the statutes and rules governing the assessment and collection of taxes.
>
> (b) *Taxpayer contest proceedings*.--
>
> 1. In any administrative proceedings brought pursuant to this chapter as authorized by s. 72.011(1), the taxpayer shall be designated the "petitioner" and the

> Department of Revenue shall be designated the "respondent," . . . .
>
> 2. In any such administrative proceeding, the applicable department's burden of proof, except as otherwise specifically provided by general law, shall be limited to a showing that an assessment has been made against the taxpayer and the factual and legal grounds upon which the applicable department made the assessment.

Once the Department has met this initial burden of proof, the burden shifts to the taxpayer to demonstrate by a preponderance of the evidence that the assessment is incorrect. IPC Sports, Inc. v. State, Dep't of Revenue, 829 So. 2d 330, 332 (Fla. 3d DCA 2002).

18. The Department seeks to hold Spectramin liable for the payment of use tax on the cost price of magnetic tapes containing digitally encoded names and addresses of prospective customers leased for one-time use by Spectramin during the Audit Period. Section 212.05, Florida Statutes (2001),[3] provides as follows:

> **Sales, storage, use tax**.--It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

* * *

(b) At the rate of 6 percent of the cost price of each item or article of tangible personal property when the same is not sold but is used, consumed, distributed, or stored for use or consumption in this state;

19. Section 212.02, Florida Statutes (2001), provides in pertinent part:

Definitions.--The following terms and phrases when used in this chapter have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

(4) "Cost price" means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor or service costs, transportation charges, or any expenses whatsoever.

* * *

8) "In this state" or "in the state" means within the state boundaries of Florida as defined in s. 1, Art. II of the State Constitution and includes all territory within these limits owned by or ceded to the United States.

* * *

18) "Storage" means and includes any keeping or retention in this state of tangible personal property for use or

consumption in this state or for any purpose other than sale at retail in the regular course of business.

(19) "Tangible personal property" means and includes personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses, including electric power or energy, boats, motor vehicles and mobile homes as defined in s. 320.01(1) and (2), aircraft as defined in s. 330.27, and all other types of vehicles. The term "tangible personal property" does not include stocks, bonds, notes, insurance, or other obligations or securities; intangibles as defined by the intangible tax law of the state; or pari-mutuel tickets sold or issued under the racing laws of the state.

(20) "Use" means and includes the exercise of any right or power over tangible personal property incident to the ownership thereof, or interest therein, except that it does not include the sale at retail of that property in the regular course of business. . . .

(21) The term "use tax" referred to in this chapter includes the use, the consumption, the distribution, and the storage as herein defined.

20. Section 212.06, Florida Statutes (2001), provides in pertinent part:

Sales, storage, use tax; collectible from dealers; "dealer" defined; dealers to collect from purchasers; legislative intent as to scope of tax.--

(1)(a) The aforesaid tax at the rate of 6 percent of the retail sales price as of the moment of sale, 6 percent of the cost price as of the moment of purchase, or 6 percent of the cost price as of the moment

of commingling with the general mass of property in this state, as the case may be, shall be collectible from all dealers as herein defined on the sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state of tangible personal property or services taxable under this chapter. . . .

* * *

2)(a) The term "dealer," as used in this chapter, includes every person who manufactures or produces tangible personal property for sale at retail; for use, consumption, or distribution; or for storage to be used or consumed in this state.

b) The term "dealer" is further defined to mean every person, as used in this chapter, who imports, or causes to be imported, tangible personal property from any state or foreign country for sale at retail; for use, consumption, or distribution; or for storage to be used or consumed in this state.

(c) The term "dealer" is further defined to mean every person, as used in this chapter, who sells at retail or who offers for sale at retail, or who has in his or her possession for sale at retail; or for use, consumption, or distribution; or for storage to be used or consumed in this state, tangible personal property as defined herein, including a retailer who transacts a mail order sale.

* * *

(4) On all tangible personal property imported or caused to be imported from other states, territories, the District of Columbia, or any foreign country, and used by him or her, the dealer, as herein defined, shall pay the tax imposed by this chapter on all articles of tangible personal property so imported and used, the same as

> if such articles had been sold at retail for use or consumption in this state. For the purposes of this chapter, the use, or consumption, or distribution, or storage to be used or consumed in this state of tangible personal property shall each be equivalent to a sale at retail, and the tax shall thereupon immediately levy and be collected in the manner provided herein, provided there shall be no duplication of the tax in any event.
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> * * *
>
> (8)(a) Use tax will apply and be due on tangible personal property imported or caused to be imported into this state for use, consumption, distribution, or storage to be used or consumed in this state; . . . .

21. Florida Administrative Code Rule 12A-1.091, provides in pertinent part:

> (1) The Florida Sales and Use Tax Act imposes a tax on the use, consumption, distribution, and storage for use or consumption in this state of tangible personal property purchased in such manner that the sales tax would not be applicable at the time of purchase.
>
> (2)(a) The use tax applies to the use in this state of tangible personal property purchased outside Florida which would have been subject to the sales tax if purchased from a Florida dealer; . . . .
>
> (b) The rental or lease of tangible personal property which is used or stored in this state shall be taxable without regard to its prior use or tax paid on purchase outside this state.
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> * * *

> (7) Under Section 212.06(1), F.S., use tax is imposed upon the cost of tangible personal property imported into this state for use, consumption, distribution, or storage for use or consumption in this state, after it has come to rest and has become a part of the general mass of property in this state, ...
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> * * *
>
> (14)(a) Any person, whether registered or unregistered, who has purchased or leased tangible personal property either in this state or from out-of-state for use, consumption, or distribution, or for storage to be used or consumed in this state without having paid sales tax on such property if subject to tax, is required to remit use tax on the cost price and on the lease of such property. If such person is registered, use tax is to be remitted with the dealer's sales and use tax return.

22. No Florida appellate court has addressed the issue of whether magnetic tape encoded with names and addresses and other data is tangible personal property for purposes of Florida's sales and use tax. The issue has, however, been addressed at length in the Recommended Order entered May 27, 2003, by Administrative Law Judge John Van Laningham in Dunhill International List Co., Inc. v. Department of Revenue, DOAH Case No. 02-3614. Dunhill was a Florida corporation located in Boca Raton, Florida. It engaged in the business of providing mailing lists to direct-mail and other marketers. It acted essentially as a middleman. It leased, on behalf of its customers, mailing lists for one-time use from mailing-list vendors; it loaded the

lists onto its computer; it printed the lists on whatever tangible medium, such as 3 x 5 cards, pressure-sensitive labels, or Cheshire labels, its customers specified; and it delivered the cards or labels to its customers. The mailing lists were frequently delivered to Dunhill by its mailing-list vendors as data digitally encoded on magnetic tape.

23. Dunhill collected and paid sales tax on the transactions with its customers, but it did not pay sales or use tax on the mailing lists it leased from its vendors. The Department sought to collect sales and use tax from Dunhill "on the total consideration" Dunhill paid for each mailing list it leased in the form of data digitally encoded on magnetic tape "where, as often happened, Dunhill's customer was provided a mailing list via some medium besides magnetic tape." Recommended Order at page 6, paragraph 8.

24. The issue in Dunhill was, therefore, whether "a mailing list, when stored in a digital data file located on a magnetic tape, constitutes 'tangible personal property' as that term is defined in Section 212.02(19), Florida Statutes." Recommended Order at page 17, paragraph 30. Administrative Law Judge Van Laningham engaged in an extensive analysis to determine whether the defining characteristic of magnetic tape containing digitally-encoded data is the "tangibility of the tape—or the intangibility of the data." Recommended Order at

page 18, paragraph 31. Administrative Law Judge Van Laningham pointed out that, although there was no case on point in Florida, the courts of several other states have considered the issue, and he noted that the courts of some states have concluded that the defining characteristic of magnetic tapes containing digitally-encoded data was tangibility, rendering the tapes tangible personal property subject to sales and use tax, while the courts of several other states have concluded that the defining characteristic was the intangibility of the data encoded on the tapes, rendering them intangible property not subject to sales and use tax.

25. Citing the rule of law that "all ambiguities and doubts [in a taxing statute] are to be resolved in favor of the taxpayer," Recommended Order at page 31, paragraph 53, Administrative Law Judge Van Laningham found that mailing lists digitally encoded on magnetic tape have both tangible and intangible elements and that:

> [because] Section 212.02(19), Florida Statutes, is ambiguous as to whether smart tapes [magnetic tapes encoded with data] are within the definition of "tangible personal property" subject to the sales and use tax, it must be concluded that these tapes are intangible personal property falling outside the scope of the relevant definition, for such a construction, which is neither fanciful nor strained but demonstrably reasonable, favors the taxpayer.

Recommended Order at page 31, paragraph 54.

26. In a Final Order entered October 16, 2003, the Department disagreed with Administrative Law Judge's Van Laningham's conclusion in Dunhill, ruling that he "mischaracterized the sale for purposes of Chapter 212, Florida Statutes, as being a sale of a service." Final Order at page 6. The Department found that the transactions at issue were subject to Florida's sales tax, reasoning as follows:

> This case involves the transmission of information by magnetic medium that can be weighed, measured and touched. The magnetic tapes are clearly tangible personal property and are essential to the sale. Therefore, the transactions are subject to sales tax based upon the total sales price. Florida Association of Broadcasters v. Kirk, 264 So. 2d 437 (Fla. Street DCA 1972). (Photographic film subject to tax.) American Telephone and Telegraph Company v. Florida Dept. of Revenue, 764 So. 2d 665 (Fla. 1st DCA 2000). (Sale of engineering services are subject to tax when intertwined with the sale of telecommunication equipment).

27. Having carefully considered Administrative Law Judge Van Laningham's analysis of the tangibility of magnetic tapes containing encoded data in his Recommended Order in Dunhill, the reasoning supporting the Department's conclusion in its Final Order in Dunhill that the lease of magnetic tapes containing digitally encoded data is subject to Florida's sales and use tax, the reasoning of the courts in the cases cited by Administrative Law Judge Van Laningham that have ruled on the

issue of the tangibility or intangibility of magnetic tapes encoded with data, and the reasoning included in the proposed conclusions of law submitted by Spectramin and by the Department in this case, it is concluded that magnetic tapes containing digitally-encoded mailing lists have both tangible and intangible elements. The defining characteristic of the magnetic tapes is, however, the intangible aspect of the data encoded on the tapes. The definition of "tangible personal property" in Section 212.02(19), Florida Statutes (2001), does not clearly and unambiguously encompass such intangible property, and neither Section 212.05 nor Section 212.06, Florida Statutes (2001), expressly brings the cost price paid by Spectramin for the one-time lease of the magnetic tapes at issue herein within the scope of Florida's sales and use tax. Accordingly, Administrative Law Judge Van Laningham's reasoning in Dunhill with respect to the application of Florida's sales and use tax to magnetic tapes encoded with data is also applicable in the instant case:

> The conclusion that Section 212.02(19) is ambiguous as to whether the transactions at hand are within the reach of the sales and use tax is outcome determinative. The reason for this follows from the first principle that "taxes may be collected only within clear and definite boundaries recited by statute." Maas Bros., Inc. v. Dickinson, 195 So. 2d 193, 198 (Fla. 1967); Florida S & L Services, Inc. v. Department of Revenue, 443 So. 2d 120, 122 (Fla. 1st DCA

> 1983)("Taxes cannot be imposed except in clear and unequivocal language. Taxation by implication is not permitted.") On this premise rests the robust rule that "tax laws are to be construed strongly in favor of the taxpayer and against the government, and that all ambiguities and doubts are to be resolved in favor of the taxpayer. Maas Bros., 195 So. 2d at 198; Lloyd Enterprises, Inc. v. Dept. of Revenue, 651 So. 2d 735, 739 (Fla. 5th DCA 1995); Florida Hi-Lift v. Dept. of Revenue, 571 So. 2d 1364, 1368 (Fla. 1st DCA 1990).[4]

Recommended Order at pages 30-31, paragraph 53.

28. Even if the Department's proposed conclusion that the magnetic tapes at issue herein are subject to Florida's sales and use tax is accepted, the question of the taxability of the magnetic tapes at issue in the instant case is not resolved. In this case, unlike Dunhill, the data on the tapes were transferred to a computer and printed onto a tangible medium outside Florida. Thus, the determinative issue in this case is whether the magnetic tapes were used, consumed, or distributed in Florida or were stored for use or consumption in Florida.

29. Based on the findings of facts herein, Spectramin has met its burden of proving by a preponderance of the evidence that the tapes were not used, consumed, or distributed in Florida or stored for use or consumption in Florida. The Oklahoma Supreme Court held in Globe Life and Accident Insurance Co. v. Oklahoma Tax Commission, 913 P.2d 1322, 1328 (Okla. 1996),[5] that the use of magnetic tapes digitally encoded with

data did not occur with the mere possession of the tapes but with the final disposition of the information encoded on the tapes: "The common law looks to *the personal property's end use or disposition* to determine whether it is tangible or intangible. The magnetic tapes' final disposition is *not* their *possession--a common-law bellwether of a thing's tangible nature*." (Emphasis in the original.) In this case, the evidence is uncontroverted that the mailing lists contained on the magnetic tapes were printed on Spectramin's self-mailers out of Florida. Spectramin, therefore, did not use or consume the data on the tapes in this state; indeed, did not have the ability to download the data on its computers.

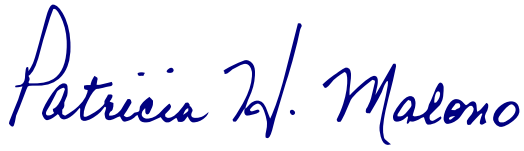
30. Furthermore, although Spectramin took delivery of the tapes in Florida, it did not store the tapes for use or consumption in Florida. The boxes containing the tapes were not opened but were placed on a shelf for one or two days before being shipped out of the state to one of the letter shops that produced the addressed self-mailers for Spectramin. Because they were not used or consumed in Florida, the mere delivery of the tapes to Spectramin at its office in Florida does not constitute a taxable event. As the court observed in Wanda Marine Corp. v. State, Department of Revenue, 305 So. 2d 65, 69 (Fla. 1st DCA 1975), quoting from Whitehead & Kales Co. v. Green, 113 So. 2d 732 (Fla. 1st DCA 1959): "[T]he theory

supporting the use tax is that it is an impost on the privilege of using personal property which has been shipped into the state and come to rest in the taxing forum and has become a part of the property within the taxing situs." See also Florida Administrative Code Rule 12A-1.091(7)("[U]se tax is imposed upon the cost of tangible personal property imported into this state for use, consumption, distribution, or storage for use or consumption in this state, after it has come to rest and has become a part of the general mass of property in this state.") The tapes at issue herein did not come to rest in Florida, and the tapes are not, therefore, subject to the Florida use tax.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Revenue issue a final order withdrawing the sales and use tax assessment against Spectramin, Inc., for the audit period extending from September 1, 1996, through August 31, 2001.

DONE AND ENTERED this 24th day of January, 2005, in Tallahassee, Leon County, Florida.



PATRICIA HART MALONO
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of January, 2005.

ENDNOTES

[1]/ The assessment at issue does not involve Spectramin's catalog mailings.

[2]/ Spectramin carefully planned the mailing date for each batch of self-mailers, and the mailing lists encoded on the magnetic tapes needed to be used mailers as soon as possible after Spectramin received the lists from the vendor. Mr. Leonard testified that, in the mail-order vitamin business, it was crucial to be the first company to send a mailing to a prospective customer. If Spectramin held a mailing list too long, it lost its value because Spectramin's competitors were likely to be ordering lists containing many of the same names and addresses.

[3]/ Citations to the tax statutes applicable in this case are to the 2001 edition of the Florida Statutes. The Audit Period extended from September 1, 1996, through August 31, 2001; the taxing statutes at issue herein were substantially the same throughout the Audit Period.

[4]/ As in Dunhill, Spectramin "is not seeking an exemption from a lawful tax (not, at least, when it argues that smart tapes [magnetic tapes encoded with data] are intangible personal property), but rather is challenging the validity of the tax. Therefore, the principle that exemptions are strictly construed against the taxpayer, see, e.g., State Dept. of Revenue v. Anderson, 403 So. 2d 397, 399 (Fla. 1981), is inapplicable in determining the reach of Section 212.02(19), Florida Statutes." Recommended Order at page 39, fn. 28.

[5]/ In this case, the court considered whether magnetic tapes encoded with mailing lists were intangible property, found that they were intangible property, and concluded that such tapes were not subject to Oklahoma's sales and use tax.

COPIES FURNISHED:

Joseph C. Moffa, Esquire
Law Offices of Moffa & Gainor, P.A.
One Financial Plaza, Suite 2202
100 Southeast Third Avenue
Fort Lauderdale, Florida 33394

Carrol Y. Cherry, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

Bruce Hoffmann, General Counsel
Department of Revenue
204 Carlton Building
Tallahassee, Florida 32399-0100

James Zingale, Executive Director
Department of Revenue
104 Carlton Building
Tallahassee, Florida 32399-0100

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.