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COMMONWEALTH of VIRGINIA

Department of Taxation
Richmond, Virginia 23282

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Subject: Sales & Use
Dealers Discount
 Subject: _____
 Subject: _____

MEMORANDUM

TO: Russell C. Whitehead, Jr., Supervisor
 Taxpayer Assistance Section

DATE: April 1, 1985

RE: Disallowance of Sales Tax Dealer's Discount
 When Tax Not Paid In Full

This will reply to your memorandum of February 7, 1985 in which you request a determination whether the sales tax dealer's discount should be disallowed when a return is filed and paid timely, but an arithmetic error causes an actual underpayment of tax.

Section 58.1-622 of the Code of Virginia provides for the dealers discount on a sales tax return "if the amount due was not delinquent at the time of payment." Under a strict reading of the statute, a dealer's discount would not be allowed when the full amount of tax due is not timely paid. However, Virginia Code Section 58.1-622 is not an exemption statute and need not be construed as strictly as an exemption statute under the law.

As a strict reading of the statute is not required, it is therefore helpful to look at our standard operating procedures in similar situations. You correctly noted in your memorandum that dealer's discounts are not disallowed when additional tax liabilities are identified through audits. It, therefore, seems reasonable that dealer's discount should not be disallowed because of a dealer's computational error. Furthermore, it is helpful to look at the intent of the legislature in enacting a statute. The dealer's discount was intended to reimburse dealers for administering and timely remitting the tax. In this situation, however, the dealer has correctly collected and timely remitted the tax, but because of a computational error has failed to remit a small portion of the tax. The statute would seem to deny the discount to a dealer only when he fails to timely pay the tax - such is not the case here.

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Based upon the foregoing, dealer's discount should not be denied only when a computational error causes an otherwise timely filed and paid return to be underpaid.

Danny M. Payne

Danny M. Payne, Director
Tax Policy Division

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Approved:

W. H. Forst
W. H. Forst
Tax Commissioner