DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 00-0255
Sales and Use Tax
For The Period: 1997 - 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax: Shipping and Handling Charges

Authority: 45 IAC 2.2-4-2; 45 IAC 2.2-4-3

The taxpayer protests the taxability of shipping and handling charges.

II. Sales and Use Tax: Computer Pricing Tape

Authority: IC 6-2.5-2-1

The taxpayer protests the assessment of use tax on computer pricing tape.

III. Sales and Use Tax: Collection Allowance

Authority: IC 6-2.5-6-10; 45 IAC 2.2-8-5

The taxpayer protests that the collection allowance is applicable to self-assessed use tax.

STATEMENT OF FACTS

Taxpayer operates a retail store that sells office supplies, equipment, and furniture. The taxpayer also sells/leases photocopier machines. More facts will be provided below as needed.

I. Sales and Use Tax: Shipping and Handling Charges

DISCUSSION

Taxpayer protests the taxability of shipping and handling charges. At issue is 45 IAC 2.2-4-3, which states in pertinent part:

> (a) *Separately stated* delivery charges are considered part of selling at retail and subject to sales and use tax if the delivery is made by or on behalf of the seller of the property not owned by the buyer.
> (b) The following guidelines have been developed:
> (1) Delivery charge *separately* stated with F.O.B. destination—taxable.
> (2) Delivery charge *separately* stated with F.O.B. origin—non taxable.
> (3) Delivery charge *separately* stated where no F.O.B. has been established—non taxable.
> (4) Delivery charges included in the purchase price are taxable. (Emphasis added)

As can be surmised from the language of the regulation, to even meet the threshold for possible non-taxability the delivery charges have to be *separately stated*. The taxpayer's delivery charges that are at issue were not separately stated. The Department brought this to the taxpayer's attention:

> The freight charges are a combined "shipping and handling" and are not segregated as freight only. For freight charges to be non-taxable, they must be separately stated, in accordance with Indiana Administrative Code 45 IAC 2.2-4-3. (Letter to Taxpayer, dated 3/5/01)

To further buttress the Department's position, Sales Tax Information Bulletin #1 states the following:

> **APPLICATION OF SALES TAX TO DELIVERY AND OTHER CHARGES**
>
> Indiana Code 6-2.5-4-1 (e) provides that the gross income received from "selling at retail" is taxable to the extent that the income represents any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer, and which are separately stated on the transferor's records. In applying the above authorities to the express wording of Indiana Code 6-2.5-4-1 (e), the following guidelines have been developed:
>
> 1. Delivery charges included in the purchase price - Taxable
> 2. Delivery charges *separately* stated with F.O.B. destination - Taxable
> 3. Delivery charges *separately* stated with F.O.B. origin - Non Taxable
>
> These rules are only applicable in determining whether or not the delivery charge of an otherwise taxable sale is also subject to sales or use tax.

> Taxable delivery charges include not only delivery charges made by the retail merchant, but also parcel post charges, Railway Express charges, or other common carrier *freight charges* for which the retailer bills the purchaser. (Emphasis added)

The taxpayer argued at hearing that "shipping and handling" constitutes a series of events—delivery, packaging, and labor—and thus should not be taxed. But as can be seen from 45 IAC 2.2-4-3 and Sales Tax Information Bulletin #1, shipping and handling charges are clearly taxable if they do not comport with aforementioned regulation and bulletin.

FINDING

Taxpayer's protest is denied.

II. Sales and Use Tax: Computer Pricing Tape

DISCUSSION

The taxpayer has a contract with Company A. Under the contract Company A sells goods to the taxpayer. In conjunction with the contract, the taxpayer also purchases goods from a subsidiary of Company A—Company B. Company B sells an updated price listing on computer tape. Taxpayer purchases the updated price list on a quarterly basis. The issue is whether or not this constitutes a sale of property or a service.

Taxpayer argues that the computer pricing tape is a service based on the fact that the taxpayer is required to update quarterly (as part of the maintenance agreement), and the update occurs by (paraphrasing taxpayer) 'inserting the updated tape in the machines.' Per the taxpayer the tape then updates the pertinent data—pricing, descriptions, etc., of items.

The issue of whether the tape itself (the size of a VCR tape, according to the auditor), or the service of updating, is being purchased, is similar to the issue of computer software. Sales Tax Information Bulletin #8 states,

> Pre-written programs, not specifically designed for one purchaser, developed by the seller for sale or lease on the general market in the form of tangible personal property and sold or leased in the form of tangible personal property are subject to tax irrespective of the fact that the program may require some modification for a purchaser's particular computer. Pre-written or canned computer programs are taxable because the intellectual property contained in the canned program is no different than the intellectual property in a videotape or a textbook

The computer pricing tape is akin to canned software and is thus taxable. When Company B is changing its pricing and catalog, it provides computer pricing tape to

merchants so that merchants can update that information. If there is any tailoring or customization to the computer tape, it is for Company B's benefit, not the taxpayer's.

FINDING

Taxpayer's protest is denied.

III. Sales and Use Tax: Collection Allowance

DISCUSSION

The Indiana Code provides a sales and use tax collection allowance "to compensate retail merchants for collecting and timely remitting the state gross retail tax and the state use tax." Taxpayer states,

> I discovered that collection allowance for sales and use tax should be on both sales and use tax. We have never taken the allowance on use tax portion on the tax bill.

As noted, in order to offset some of the administrative costs associated with collecting and remitting to the Department, IC 6-2.5-6-10 provides the following:

> (b) The allowance equals one percent (1%) of the retail merchant's state gross retail and use tax liability accrued during a reporting period.

The collection allowance is for retail merchants that either (1) collect and remit *sales* tax to the Department (that is, a retail merchant collects sales tax from its customers as an agent for the Department and remits the tax to the Department); or (2) an out-of-state merchant collects *use* tax on a purchase made by an Indiana purchaser (*See* 45 IAC 2.2-8-5).

The taxpayer is not an out-of-state merchant, thus it collects *sales* tax from its customers. Taxpayer does not collect *use* tax as outlined in 45 IAC 2.2-8-5. The use tax presently at issue is not use tax collected by the taxpayer from taxpayer's customers, it is *self-assessed* use tax (i.e., tax owed by the *taxpayer* itself). Given that the collection allowance is for the collection, and not self-assessment of use tax, the taxpayer is denied.

FINDING

Taxpayer's protest is denied.

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