DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0075
SALES TAX
For Years 1999, 2000, and 2001

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ISSUES

I. Sales Tax—Application to tangible personal property purchased in Indiana for use outside the state

Authority: IC 6-2.5-5-15

Taxpayer protests the imposition of sales tax on truck campers purchased in Indiana and subsequently used outside the state because the Indiana Code makes exempt purchases where certain items are to be transferred and used out of state.

II. Sales Tax—Ability to impose sales tax on items where other states have imposed their own gross retail taxes

Authority: IC 6-2.5-2-1(b)

Taxpayer protests the imposition of sales tax on truck campers purchased in Indiana and subsequently used outside the state because the other states have imposed their own gross retail tax upon taxpayer's customers

III. Tax Administration- Ten Percent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer sells new and used campers, travel trailers, fifth wheels, and truck campers. Taxpayer also sells parts and services all makes and models. The transactions at issue here all involve out-of-state customers who signed a form (ST-137) attesting to the fact that the customers were taking their purchase (truck campers, in this case) out of state. Taxpayer has been assessed sales tax on these sales, and in some instances the customers have also been assessed use tax by their home state.

DISCUSSION

I. Sales Tax—Application to tangible personal property purchased in Indiana for use outside the state

Taxpayer is in the business of selling new and used campers, travel trailers, and fifth wheels. As part of its business, taxpayer also sells a line of truck campers. These campers differ from normal trailers in that they don't attach to the end and aren't towed by the truck. Instead, these campers are placed onto the bed of a truck. Despite this very relevant difference, the truck campers are quite similar to ordinary trailer campers on the inside.

When taxpayer sells ordinary campers and trailers to its out-of-state customers, the customers are then able to claim an exemption from Indiana sales tax through IC 6-2.5-5-15. To take advantage of this statutory exemption, taxpayer has its customers fill out a form ST-137. This form may be used for such items as aircraft, manufactured homes, motor vehicles, trailers, and watercraft. The form, which implements IC 6-2.5-5-15, is intended to be used only on those particular items which are to be registered and/or titled outside the state of Indiana.

IC 6-2.5-5-15 reads:

> Transactions involving motor vehicles, trailers, watercraft, and aircraft are exempt from the state gross retail tax, if:
> (1) Upon receiving delivery of the motor vehicle, trailer, watercraft, or aircraft, the person immediately transports it to a destination outside Indiana;
> (2) The motor vehicle, trailer, watercraft, or aircraft is to be titled or registered for use in another state; and
> (3) The motor vehicle, trailer, watercraft, or aircraft is not to be titled or registered for use in Indiana.

Truck campers are in a class of their own, being neither trailers nor free-moving campers. They are attached to trucks that are typically independently registered or titled, but are themselves very infrequently registered or titled. Because taxpayer has offered no proof that these particular truck campers were in fact titled or registered out of state, and because they do not fall into any of the classes of vehicles described in form ST-137 or identified in IC 6-2.5-5-15, these forms should not have been used by taxpayer because they offer no exemption for the sale of truck campers, regardless of the state of residence of the customer.

FINDINGS

The taxpayer is respectfully denied.

II. Sales Tax—Ability to impose sales tax on items where other states have imposed their own gross retail taxes

DISCUSSION

Because taxpayer has been incorrectly filing ST-137 forms with Indiana, Indiana has been in contact with those states in which taxpayer's customers have been taking their purchases. Subsequently, because the form signals those other states that no retail tax has been paid on the purchase, and because taxpayer's customer claims that he will be using the property in that state, those states have been assessing taxpayer's customers with their own version of a use tax, should one exist in that state. Taxpayer believes that, should it be found liable for sales tax to Indiana, that unfair double taxation results on each individual transaction where two states impose their own tax. And while taxpayer's contention has some merit, it is the assessment of the use tax by the customer's home state and not the imposition of sales tax by Indiana that results in the double taxation.

According to IC 6-2.5-2-1(b), the person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state. IC 6-2.5-2-1(b). Therefore, even though taxpayer collected no sales tax from its customer, taxpayer remains liable for the tax because it was to act as the state's agent and collect the tax. The fact that taxpayer incorrectly thought itself exempt is irrelevant.

Because taxpayer should have collected sales tax from its customers, taxpayer's course of action to get that money back is against its customers, not against the state of Indiana. Consequently, if this results in taxpayer's customers being unfairly double taxed, then taxpayer's customers have a cause of action for a refund from their home state, not Indiana.

FINDINGS

The taxpayer is respectfully denied.

DISCUSSION

III. Tax Administration- Ten Percent (10%) Negligence Penalty

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

> "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence.

> Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Taxpayer has demonstrated its efforts to comply in good faith with the tax laws of Indiana. These factors show that taxpayer was not negligent in its duty to collect and remit sales tax.

FINDINGS

The taxpayer is sustained.

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