

**Letter of Findings Number: 05-0272**  
**Sales Tax**  
**For Tax Year 2002**

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**ISSUE**

**I. Sales Tax—Public Transportation**

**Authority:** Carnahan Grain, Inc. v. Indiana Dept. of State Revenue, 828 N.E.2d 465 (Ind. Tax 2005); Indiana Dept. of State Revenue, Gross Income Tax Division v. Indiana Harbor Belt Railroad Co., 460 N.E.2d 170 (Ind. App. 1984); [IC 6-2.5-5-27](#); [45 IAC 2.2-5-61](#)

Taxpayer protests imposition of sales tax on certain items.

**STATEMENT OF FACTS**

Taxpayer operates a freight transportation service. As the result of an audit, the Indiana Department of Revenue ("Department") issued sales tax assessments for the tax year 2002. Taxpayer protests that certain items are exempt from sales tax under the public transportation exemption. Further facts will be supplied as required.

**I. Sales Tax—Public Transportation**

**DISCUSSION**

Taxpayer protests the imposition of sales tax on certain items it purchased. Taxpayer claims that it is entitled to the public transportation exemption on these items. That exemption is found at [IC 6-2.5-5-27](#), which states:

Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

Taxpayer offers several examples of items it believes are eligible for this exemption. Taxpayer also provides reasons it believes the items are eligible.

In the course of conducting the audit, the Department and taxpayer reached and signed an agreement to use a projection method to determine taxpayer's sales tax liability. Taxpayer had the opportunity to review the projection sample prior to the issuance of the audit report. Taxpayer agreed to the items in the sample at that time and now protests some of the items included are eligible for the public transportation exemption.

The purpose of having a projection method is to eliminate the necessity for a detailed invoice-by-invoice audit. The projection used sample invoices to calculate a percentage of taxpayer's total purchases which were subject to sales tax. The projection method eases the burden on the Department and on the taxpayer. Taxpayer agreed to the use of the projection method. Taxpayer agreed to the projection sample prior to the issuance of the audit report.

To remove some items taxpayer disagrees with at this time would defeat the purpose of the projection method. The projection method was used to eliminate the need for a detailed, full audit. If the taxpayer were allowed to select the items it thought it could obtain an exemption on now, the Department would not have a similar opportunity to go through taxpayer's invoices to find items which should have been taxed but were not. Taxpayer's proposal would defeat the very purpose of using a projection.

The Agreement for Projecting Audit Results, which was signed by both parties, explains that capital expenditures and special projects were not included in the projection agreement. Taxpayer protests that capital asset purchases in the form of computer mainframe hardware, software and peripherals should be exempt under [45 IAC 2.2-5-61](#). In discussing the public transportation exemption, the Indiana Tax Court has explained, in Carnahan Grain, Inc. v. Indiana Dept. of State Revenue, 828 N.E.2d 465 (Ind. Tax 2005), that:

. . . [B]ecause [Taxpayer] predominantly used the property at issue for transporting agricultural commodities owned by third parties, it is entitled to the public transportation exemption.  
Id., at 469.

The Indiana Tax Court clarified this exemption in Indiana Dept. of State Revenue, Gross Income Tax Division v. Indiana Harbor Belt Railroad Co., 460 N.E.2d 170 (Ind. App. 1984), when the court explained:

The exemptions to which the Department objects affect several categories of items purchased by the Railroad:

1. Tools and equipment used to repair and maintain rolling stock and track;
2. Items used for repair and maintenance of the Railroad's buildings;
3. Vehicles (other than locomotives or rolling stock) used primarily for transportation of track maintenance crews;
4. Items used for repairs and maintenance of the vehicles in (3) above;
5. Items used in general administrative and managerial operations such as office equipment, uniforms and

locks and keys.

These categories of items we find to be clearly within the *Cave Stone, Inc.* concept of direct use or consumption in the integrated operation of providing public transportation. The items are needed and used by the Railroad in effectively providing transportation service. They are an integral part of the Railroad's rendering of public transportation.

Id., 176-7

Therefore, taxpayer must use the tangible personal property in an integrated operation of public transportation in order for the tangible personal property to qualify for the public transportation exemption.

Taxpayer states that the computers, software and peripherals are used to support the transportation business in various ways. Taxpayer explains that the items at issue are used to track and manage the packages and trucks and to generate and receive messages from its customers. These items qualify as communication equipment as listed as exempt in [45 IAC 2.2-5-61\(d\)](#) or items used in general administrative and managerial operations such as office equipment, as listed as exempt in [Indiana Harbor Belt Railroad](#). Therefore, the items are exempt under the public transportation exemption.

In conclusion, the projection method was agreed to by both parties. Taxpayer had the opportunity to disagree with the sample and the method prior to the audit being issued. Taxpayer cannot now select the single items it thinks should not be subject to tax. This would defeat the purpose of having a projection method and would invalidate the entire audit. The non-projection category of capital purchases, in the form of computers used in general administrative and managerial operations, are listed as exempt in [Indiana Harbor Belt Railroad](#) and are exempt under [45 IAC 2.2-5-61\(d\)](#).

#### **FINDING**

Taxpayer's protest is denied in part and sustained in part.

*Posted: 08/30/2006 by Legislative Services Agency*  
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