

**Letter of Findings Number: 05-0380
Sales and Use Tax
For The Tax Period 2002-2004**

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ISSUES

I. Sales and Use Tax -Imposition of Sales Tax

Authority: IC § 6-2.5-2-1(a), IC § 6-2.5-2-2, IC § 6-8.1-5-1(b), IC § 6-8.1-5-4.

The taxpayer protests the imposition of sales tax.

II. Sales and Use Tax -Imposition of Use Tax

Authority: IC § 6-2.5-3-2 (a), *Gross Income Tax Division v. National Bank and Trust Co.*, 79 N.E. 2d 651 (Ind. 1948).

The taxpayer protests the imposition of use tax.

STATEMENT OF FACTS

The taxpayer is a corporation that operates an entertainment center. Pursuant to an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use taxes, penalty, and interest against the taxpayer. The taxpayer protested these assessments. A hearing was scheduled. Since the taxpayer declined the opportunity to participate in the hearing, this Letter of Findings is based upon the documentation in the file.

I. Sales Tax-Imposition

DISCUSSION

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. IC § 6-2.5-2-1(a). The sales tax to be remitted to the state is computed by multiplying the total sales by the sales tax rate. IC § 6-2.5-2-2.

Notices of proposed assessments are prima facie evidence that the department's claim for unpaid taxes is valid. The taxpayer has the burden of proving that the department incorrectly imposed the assessment. IC § 6-8.1-5-1(b). Taxpayers are required to keep adequate books and records so that the department can determine the proper tax owed to the state. IC § 6-8.1-5-4.

The taxpayers' books and records were not adequate to allow the department to determine the taxpayer's total sales and correct amount of sales tax due to the state. Therefore, the department had no option but to prepare an estimate of total sales based upon the best information available. The taxpayer produced bank deposit records and sales tax returns for the year 2002. The department assumed that the bank deposits indicated the total sales made by the taxpayer. Therefore, the department assessed sales tax on the difference between the bank deposits and the total sales reported on the sales tax returns. No bank statements were available for the year 2003. Therefore, the audit assessed sales tax on the difference between the average of bank deposits for 2002 and 2004 and the taxable sales reported on the 2003 sales tax returns. The taxpayer provided bank statements for ten of the months of 2004. The department averaged the bank deposits of those ten months and used that figure for the two missing months. Sales tax was assessed on the difference between the 2004 bank deposits and the 2004 sales tax returns.

The taxpayer objected to these methods of estimating the amount of sales tax due for the years 2002-2004 and gave several explanations for why these assessments would not be accurate. The taxpayer did not, however, provide any documentary evidence to substantiate an alternate means by which to accurately determine its tax liability. The taxpayer failed to sustain its burden of proof.

FINDING

The taxpayer's protest is denied.

II. Sales and Use Tax -Imposition of Use Tax

DISCUSSION

The department assessed use tax on several items such as coolers, refrigerators, ice machines, and wrist bands. The taxpayer protested these assessments.

Indiana imposes an excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana if sales tax was not paid at the time of purchase. IC § 6-2.5-3-2 (a). There are number of statutory exemptions from the use tax based on how a particular item was used. All exemptions must be strictly construed against the party claiming the exemption. *Gross Income Tax Division v. National Bank and Trust Co.*, 79 N.E. 2d 651 (Ind. 1948).

The taxpayer did not provide any documentation to explain how the protested items were used. Without such documentation, a determination cannot be made as to whether a particular item was used in an exempt manner.

The taxpayer failed to sustain its burden of proving that the use tax was improperly imposed.

FINDING

The taxpayer's protest is denied.

Posted: 08/30/2006 by Legislative Services Agency

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