DEPARTMENT OF STATE REVENUE

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Supplemental Letter of Findings Number: 06-0135
Sales Tax
For Tax Years 2003-04

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ISSUE

I. Sales Tax–Imposition

Authority: IC § 6-2.5-2-1; IC § 6-2.5-5-1; IC § 6-8.1-5-1; 45 IAC 2.2-1-1; 45 IAC 2.2-5-13; Information Bulletin 21 (May 2002)

Taxpayer protests the assessment of sales tax.

STATEMENT OF FACTS

Taxpayer protests the imposition of sales tax for the years in question. An administrative hearing was scheduled for August 10, 2006. Taxpayer did not attend the hearing. The Indiana Department of Revenue ("Department") wrote a Letter of Findings based on the materials in the file, and mailed that Letter of Findings to Taxpayer. The Letter of Findings denied the protest on the underlying liabilities and sustained the protest on the penalty. Taxpayer requested a rehearing, stating that it was not informed of the administrative hearing. The rehearing was granted and scheduled for December 22, 2006. During the rehearing, Taxpayer told the Hearing Officer that Taxpayer never received a copy of the final audit report. The Hearing Officer extended the rehearing to January 19, 2007, and mailed a copy of the final audit report to taxpayer. Taxpayer responded with a more detailed protest. This Supplemental Letter of Findings addresses that protest. Further facts will be supplied as required.

I. Sales Tax–Imposition

DISCUSSION

Taxpayer protests several items. The Department points out that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as explained in IC § 6-8.1-5-1(b). In taxpayer's first point of protest, taxpayer states that it is not in contractual relationships with its customers, and so should not be required to collect sales tax on its lawn care services. Second, taxpayer states that it should not owe sales tax on a mower it uses to mow around trees it grows for sale. Third, taxpayer states that it paid under the Amnesty program, and should not be subject to any more sales tax for the audit years.

First, taxpayer protests that it was not in contractual relationships with its customers and so should not be required to collect sales tax on the fees it charges for its lawn care services. The Department determined that taxpayer should have been collecting sales tax on its lawn care services, since taxpayer was billing its customers in unitary transactions. The first relevant statute is IC § 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(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.* (Emphasis added.)

Next, IC § 6-2.5-5-1 states:

(a) Except as provided in subsection (b), "unitary transaction" includes all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated.

(b) "Unitary transaction" as it applies to the furnishing of public utility commodities or services means the public utility commodities and services which are invoiced in a single bill or statement for payment by the consumer.

Next, 45 IAC 2.2-1-1(a) states:

Unitary Transaction. For purposes of the state gross retail tax and use tax, such taxes shall apply and be computed in respect to each retail unitary transaction. A unitary transaction shall include all items of property and/or services for which a total combined charge or selling price is computed for payment irrespective of the fact that services which would not otherwise be taxable are included in the charge or selling price.

Therefore, when a retail merchant combines its charges for services and its charges for tangible personal property into one price which it charges to its customer, that is a unitary transaction and the retail merchant is responsible for collecting sales tax on the entire combined price it charges those customers.

Taxpayer states that it is not in a contractual relationship, as discussed in Information Bulletin 21 (May 2002). Information Bulletin 21 (May 2002) discusses Departmental policy regarding lawn care services when a contractual relationship exists. The Department referred to the Information Bulletin since taxpayer provides lawn

care services. Taxpayer also states that the Department referred to Information Bulletin 21 (May 2002) in the audit report, and since it is not in the situation described in Information Bulletin 21 (May 2002), taxpayer believes that it should not be required to collect sales tax on the lawn care services it provides.

Taxpayer misunderstands the purpose of Information Bulletin 21 (May 2002). Information Bulletins are intended as guidance in specific circumstances. Just because a taxpayer does not fall within the boundaries of a particular Information Bulletin does not mean that the taxpayer is not subject to tax. In this case, taxpayer may not have been in contractual relationships with its customers, as described in Information Bulletin 21 (May 2002), but taxpayer was involved in unitary transactions with its customers, as described in IC § 6-2.5-1-1. 45 IAC 2.2-1-1(a) provides that sales tax is due on unitary transactions. Taxpayer's reliance on the fact that it does not match up with the situation dealt with in Information Bulletin 21 (May 2002) is misplaced.

Taxpayer states that it has gone to great lengths to separately break out the labor and materials costs. Taxpayer has not provided sufficient documentation to establish that it did separate out the labor and materials. Taxpayer also states that applying chemicals and fertilizers is a repair or maintenance operation and so should not be taxable. Taxpayer offers no reference to any statute, regulation or court case in support of this position. As previously explained, the burden of proving a proposed assessment wrong rests with the taxpayer, as provided in IC § 6-8.1-5-1(b). Taxpayer has not met this burden.

Taxpayer's second point of protest is that it does not believe that it should owe sales tax on its purchase of a mower, which it uses to clear around the trees it sells. Taxpayer insists that this is maintenance and that it would have much less marketable trees if it did not mow around them. The relevant regulation is 45 IAC 2.2-5-13, which states:

(a) The state gross retail tax shall not apply to sales of tangible personal property as a material which is to be directly consumed in direct production by the purchaser in the business of producing agricultural, horticultural, floricultural, or arboricultural commodities.

(b) General rule. Purchases of materials to be directly consumed by the purchaser in the business of producing tangible personal property are exempt from tax *provided that such materials are directly used in the production process; i.e., they have an immediate effect upon the commodities being produced*. Property has an immediate effect on the commodities being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

(c) Refer to Regs. 6-2.5-5-5.1(010)(7) *[45 IAC 2.2-5-12(g)]* for the definition of "consumed" as used in this regulation *[45 IAC 2.2]*.

(d) Refer to Regs. 6-2.5-5-1 *[45 IAC 2.2-5-1]* for the definition of "farmer" and "farming" as used in this regulation *[45 IAC 2.2]*.

(e) The term "farmer" will be used in this regulation *[45 IAC 2.2]* to signify both "farmers" and "other persons engaged in the business of producing food and agricultural commodities".

(f) "The business of producing tangible personal property by agriculture" means "farming" for purposes of interpreting this regulation *[45 IAC 2.2]*.

(g)(1) "Have an immediate effect upon commodities being produced". Purchases of materials to be consumed during production of commodities are taxable unless the consumption of such materials has an immediate effect upon either (1) the food or agricultural commodities being produced, or (2) machinery, tools, or equipment which are both used in direct production of commodities and are exempt from tax under these regulations *[45 IAC 2.2]*. The consumption of property has an immediate effect on the commodity being produced or on the machinery, tools, or equipment engaged in direct production of commodities if the consumption is an essential and integral part of an integrated process which produces food or an agricultural commodity.

(h) *Other taxable transactions. Purchases of materials consumed in farming beyond the scope of those activities described in subsection (g) of this section are taxable.* Such activities include, but are not limited to: pre-production activities; post-production activities; storage (except where it is an essential and integral part of an integrated production process); transportation (except where it is an essential and integral part of an integrated production process); *maintenance*; testing and inspection (except where it is an essential and integral part of an integrated production process); management and administration; sales; research and development; exhibition of products; safety and fire prevention; space heating; ventilation and cooling for general temperature control; illumination; shipping and loading.

(Emphasis provided.)

Therefore, maintenance is taxable under 45 IAC 2.2-5-13(h). The fact that the mowing makes a more marketable tree is not relevant. The maintenance of mowing around trees does not have an immediate effect on the trees themselves, as required by 45 IAC 2.2-5-13(b).

Third, taxpayer states that it already paid all of the taxes the Department said it owed under the Amnesty program, and so should not be required to pay any more. A review of the timing of the Amnesty payment shows that taxpayer paid an amount on the last day of the Amnesty program, November 15, 2005. The audit at issue in this protest was not finished until January 6, 2006. Taxpayer states that, under the Amnesty program, it already paid all that the Department said it owed. What was paid under the Amnesty program was all that the Department

knew about at that time. When the audit was completed in January of 2006, the Department had new amounts which it believed taxpayer owed. That audit report accounted for and gave credit for the original amnesty payment.

Taxpayer states that it should not be penalized, since it did its best to pay its taxes. As explained in the initial Letter of Findings, in this instance the Department has already waived penalties against taxpayer. Therefore, taxpayer is not being penalized for this audit period.

In conclusion, sales tax is due on the total amount charged in unitary transactions, as explained in 45 IAC 2.2-1-1. Taxpayer did not establish that the transactions at issue were not unitary. Mowing is maintenance, and equipment used in maintenance is taxable, as provided in 45 IAC 2.2-5-13. Taxpayer received credit for the amnesty payment it made. The Department has already waived penalty for this audit period.

FINDING

Taxpayer's protest is denied.

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An html version of this document.