

Letter of Findings Number: 06-0318
Use Tax
For the Year 2003-2004

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ISSUE

I. Use Tax—Imposition

Authority: IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-3-5.

Taxpayer protests a use tax assessment.

STATEMENT OF FACTS

Taxpayer operates a car wash. Taxpayer purchased several items of tangible personal property without paying sales tax when the items were purchased. The Department conducted an audit and assessed use tax on these items. The Department determined that Taxpayer properly collected and remitted sales tax on Taxpayer's retail transactions for the years at issue.

Taxpayer protested the assessment of use tax. The Department scheduled a hearing for March 6, 2007. However, at the time of the hearing, neither Taxpayer nor any representative appeared at the designated location for the hearing or contacted the Department. Accordingly, this Letter of Findings is based on the information contained in the file.

I. Use Tax—Imposition

DISCUSSION

Indiana imposes a use tax pursuant to IC § 6-2.5-3-2. Pursuant to IC § 6-2.5-3-2(a), an excise tax, known as the use tax, (*emphasis added*)

is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, *regardless of the location of that transaction or the retail merchant making that transaction.*

The issue is whether the Department properly assessed use tax on Taxpayer's purchases.

Taxpayer's first assertion is with respect to purchases from Indiana vendors. In particular, Taxpayer argues that "It was up to these vendors to charge the proper sales tax to [Taxpayer]. The sales tax should be collected from these vendors."

Taxpayer also protests the imposition of use tax with respect to out-of-state purchases. Taxpayer states "Each state has their own in-state and out of state sales tax requirements. [Taxpayer] cannot be responsible for collecting or paying out of state sales tax." Taxpayer also states, "Michigan, I understand, has a 'pact' with other Great Lakes states for collecting and paying taxes. Therefore, [vendor], which is a Michigan company, should be responsible for collection and payment of Indiana's sales tax."

Taxpayer's arguments are non-sequiturs. The tax assessment is for Indiana use tax. Indiana use tax is owed by consumers such as Taxpayer when a vendor does not charge sales tax to the consumer or charges less than Indiana's statutory rate of sales tax. IC § 6-2.5-3-4 (exemption for property on which Indiana sales tax is imposed); IC § 6-2.5-3-5 (credit for payment of other state sales or use taxes).

Whatever sales tax collection duties the vendor had with respect to Taxpayer's purchases are irrelevant to Taxpayer's Indiana use tax liability. Taxpayer's use of the tangible personal property in Indiana and prior payment of sales and use tax are the only relevant concerns for Taxpayer's use tax liability. Taxpayer has not shown that it paid sales tax to Indiana or any other jurisdiction on the purchases at issue. Taxpayer has also not shown that it used the relevant tangible personal property for an exempt purpose. Taxpayer's protest is denied.

FINDING

Taxpayer's protest is denied.

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