

**Letter of Findings Number: 06-0327**  
**Use Tax**  
**For Tax Years 2003-04**

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**ISSUE**

**I. Use Tax—Imposition**

**Authority:** IC § 6-8.1-5-1; [45 IAC 2.2-3-4](#)

Taxpayer protests the assessment of use tax.

**STATEMENT OF FACTS**

Taxpayer is an Indiana business in the medical industry. As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments for use tax for the tax years 2003 and 2004. Taxpayer protests imposition of a portion of these assessments. An administrative hearing was scheduled for March 20, 2007. Taxpayer failed to attend the hearing. This Letter of Findings is written based on the information in the file. Further facts will be supplied as required.

**I. Use Tax—Imposition**

**DISCUSSION**

Taxpayer protests imposition of use tax on some of the items listed on the audit report. The Department determined that use tax was due on several items upon which sales tax should have been paid but was not. The Department refers to IC § 6-8.1-5-1(b), which provides that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made.

The Department refers to [45 IAC 2.2-3-4](#), which states:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Taxpayer protests that several items are from vendors which provide services, rather than tangible personal property. Taxpayer provided one invoice from a cleaning service in support of this position. Since the invoice provided is not among those listed in the audit report, it is not applicable to this protest. Taxpayer has not provided any other documentation in support of its position that these payments are not for tangible personal property. Taxpayer has not met its burden under IC § 6-8.1-5-1(b).

Taxpayer also lists several organizations to which Taxpayer states it made membership dues payments, and that such dues are not subject to use tax. The Department taxed twenty-five percent of the payments made to these organizations, in acknowledgement that some of the payments were for membership dues. Taxpayer did not provide any documentation supporting its position that the remaining amounts were for membership dues and not for payments for tangible personal property. Taxpayer has not met its burden under IC § 6-8.1-5-1(b).

Taxpayer states that there are vendors listed which obviously charge sales tax, and therefore use tax is not due. Taxpayer provided one invoice from an electrical supply company. The invoice lists sales tax collected on the purchase. This is sufficient to explain that this item in particular should be removed from the assessments. Taxpayer has not provided any other documentation in support of its position regarding this vendor.

The other vendor Taxpayer refers to is a medical industry company which is not registered to collect Indiana sales tax. Taxpayer has provided no documentation to support its position that sales tax was collected by this vendor. Taxpayer has not met its burden under IC § 6-8.1-5-1(b).

In conclusion, Taxpayer has not met its burden under IC § 6-8.1-5-1(b) regarding its claim that some items listed on the audit report are for services and not tangible personal property. Taxpayer has not met its burden regarding the remaining twenty-five percent of payments which it claims were membership dues. Taxpayer has met its burden regarding one invoice from the electrical supply company. Taxpayer has not met its burden regarding the vendor which is not registered to collect Indiana sales tax.

**FINDING**

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

*Posted: 08/01/2007 by Legislative Services Agency*

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