

Letter of Findings Number: 07-0400
Use Tax
For Tax Year 2007

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ISSUE

I. Use Tax–Exemption.

Authority: IC § 6-2.5-5-16; IC § 6-2.5-5-21; IC § 6-2.5-5-25; Ky. Rev. Stat. Ann. § 139.510 (Michie 2006).

Taxpayer protests the vendor's imposition of sales tax on purchases based on Taxpayer's claimed tax-exempt status.

STATEMENT OF FACTS

Taxpayer is a Kentucky state agency. Taxpayer is an I.R.C. § 501(c)(3) organization. Taxpayer purchased equipment for a television tower located in Indiana. The equipment is not identified specifically in the materials submitted to the Department or in correspondence with the Department.

When Taxpayer purchased the equipment, Taxpayer did not remit sales tax to the vendor. However, the vendor later determined that Taxpayer should have remitted sales tax with respect to the item.

Taxpayer protested the vendor's attempt to collect sales tax on the item. The Indiana Department of Revenue ("Department") contacted Taxpayer with respect to a hearing. Via a telephone discussion on August 15, 2007, Taxpayer indicated that it waived its rights to an administrative hearing. Based on the waiver, Taxpayer's Letter of Findings is based on information contained in the Department's protest file, including information previously submitted by Taxpayer.

I. Use Tax–Exemption.

DISCUSSION

Taxpayer protests that it is entitled to an exemption from sales tax based on reciprocity with Kentucky. Kentucky statutes discuss reciprocity in Ky. Rev. Stat. Ann. § 139.510 (Michie 2006), which states:

(1) The tax levied by KRS 139.310 shall not apply with respect to the storage, use, or other consumption of tangible personal property in this state upon which a tax substantially identical to the tax levied under KRS 139.200 (not including any special excise taxes such as are imposed on alcoholic beverages, cigarettes, and the like) equal to or greater than the amount of tax imposed by KRS 139.310 has been paid in another state. Proof of payment of such tax shall be according to rules and regulations of the department. If the amount of tax paid in another state is not equal to or greater than the amount of tax imposed by KRS 139.310, then the taxpayer shall pay to the department an amount sufficient to make the tax paid in the other state and in this state equal to the amount imposed by KRS 139.310. No credit shall be given under this section for sales taxes paid in another state if that state does not grant credit for sales taxes paid in this state.

(2) To prevent actual multistate taxation of a communications service subject to taxation under this chapter, any provider or purchaser, upon proof that the provider or purchaser has paid a tax in another state on the same communications services, shall be allowed a credit against the tax imposed by this chapter to the extent of the amount of the tax legally paid in the other state.

Thus, under Kentucky statutes, Kentucky grants a use tax credit for use taxes paid to another state. To qualify for the credit, the other state must grant a credit for Kentucky sales and use taxes. Thus, the "reciprocity" cited by Taxpayer prevents double taxation by Kentucky and another state. In the alternative, Kentucky permits double taxation by Kentucky and another state if the other state's laws results in double taxation. Under this statute, Kentucky regards Indiana as having reciprocity with Kentucky.

However, the reciprocity does not extend to the individual exemptions provided under each state's laws. The reciprocity only avoids the possibility of double taxation by Kentucky and Indiana; it does not prevent Indiana from imposing tax on a purchase is otherwise exempt from tax under Kentucky law.

The next issue is whether the purchase is exempt under Indiana law. IC § 6-2.5-5-16 provides:

Transactions involving tangible personal property, public utility commodities, and public utility service are exempt from the state gross retail tax, if the person acquiring the property, commodities, or service:

(1) is the state of Indiana, an agency or instrumentality of the state, a political subdivision of the state, or an agency or instrumentality of a political subdivision of the state, including a county solid waste management district or a joint solid waste management district established under [IC 13-21](#) or [IC 13-9.5-2](#) (before its repeal); and

(2) predominantly uses the property, commodities, or service to perform its governmental functions.

Taxpayer is an agency of Kentucky, not Indiana. Therefore, the exemption found under IC § 6-2.5-5-16 does not apply.

The next exemption is IC § 6-2.5-5-25, which states:

Transactions involving tangible personal property or service are exempt from the state gross retail tax, if the person acquiring the property or service:

- (1) is an organization described in section 21(b)(1) of this chapter;
- (2) primarily uses the property or service to carry on or to raise money to carry on its not-for-profit purpose; and
- (3) is not an organization operated predominantly for social purposes.

IC § 6-2.5-5-21(b)(1) lists several organizations, including:

(A) A fraternity, a sorority, or a student cooperative housing organization that is connected with and under the supervision of a postsecondary educational institution if no part of its income is used for the private benefit or gain of any member, trustee, shareholder, employee, or associate.

(B) Any:

- (i) institution;
- (ii) trust;
- (iii) group;
- (iv) united fund;
- (v) affiliated agency of a united fund;
- (vi) nonprofit corporation;
- (vii) cemetery association; or
- (viii) organization;

that is organized and operated exclusively for religious, charitable, scientific, literary, educational, or civic purposes if no part of its income is used for the private benefit or gain of any member, trustee, shareholder, employee, or associate.

(C) A group, an organization, or a nonprofit corporation that is organized and operated for fraternal or social purposes, or as a business league or association, and not for the private benefit or gain of any member, trustee, shareholder, employee, or associate.

(D) A:

- (i) hospital licensed by the state department of health;
- (ii) shared hospital services organization exempt from federal income taxation by Section 501(c)(3) or 501(e) of the Internal Revenue Code;
- (iii) labor union;
- (iv) church;
- (v) monastery;
- (vi) convent;
- (vii) school that is a part of the Indiana public school system;
- (viii) parochial school regularly maintained by a recognized religious denomination; or
- (ix) trust created for the purpose of paying pensions to members of a particular profession or business who created the trust for the purpose of paying pensions to each other;

if the taxpayer is not organized or operated for private profit or gain.

Taxpayer does not fall within the categories listed under IC § 6-2.5-5-21(b)(1), and thus does not qualify for exemption as a non-for-profit entity.

In summary, Taxpayer is not entitled to reciprocity with Indiana, is not an Indiana state agency, and does not qualify as a not-for-profit entity within the categories provided under Indiana law. Thus, Taxpayer does not fall within one of the exemptions for Indiana and it can not rely on Kentucky's exemption for an Indiana exemption.

FINDING

Taxpayer's protest is denied.

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