

Letter of Findings Number: 06-0425
Food and Beverage Tax
For the Tax Years 2003-2005

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ISSUE

I. Food and Beverage Tax - Imposition.

Authority: [IC 6-8.1-5-1](#)(c); IC § 6-9-20-3; IC § 6-9-20-4(c); IC § 6-2.5-4-1(g); *Indiana Dep't of State Revenue v. Interstate Warehousing*, 783 N.E.2d 248 (Ind. 2003).

The Taxpayer protests the imposition of food and beverage tax on service charges.

STATEMENT OF FACTS

The Taxpayer is a corporation that provides banquet services. After an audit, Indiana Department of Revenue (Department) assessed additional food and beverage tax, interest, and penalty. The Taxpayer protested the assessment and a hearing was held. This Letter of Findings results.

I. Food and Beverage Tax - Imposition.

DISCUSSION

The Taxpayer served prepared meals and beverages in its banquet facilities. The invoices for the banquets have a separate eighteen percent charge for "service." The Department assessed sales tax on the service charge. The Taxpayer protested the assessment contending that the service charge was exempt from the food and beverage tax.

All assessments by the Department are presumed to be valid. IC § 6-8.1-5-1(c). The Taxpayer bears the burden of proving that any assessment is incorrect. Exemption statutes are to be strictly construed against the Taxpayer. *Indiana Dep't of State Revenue v. Interstate Warehousing*, 783 N.E.2d 248 (Ind. 2003).

A food and beverage tax is imposed on the sale of prepared meals and beverages in the county of the Taxpayer's banquet facility. IC § 6-9-20-3. Any sale of food and beverages that is exempt from the sales tax is also exempt from the food and beverage tax. IC § 6-9-20-4(c). An exemption from the sales tax is granted at IC § 6-2.5-4-1(g) as follows:

Gross retail income does not include income that represents charges for serving or delivering food and food ingredients furnished, prepared, or served for consumption at a location, or on equipment, provided by the retail merchant. However, the exclusion under this subsection only applies if the charges for the serving or delivery are stated separately from the price of the food and food ingredients when the purchaser pays the charges.

The service charge on the invoice for food and beverages at the Taxpayer's banquet facility covered the delivery of the food and beverages to the patrons by the wait staff. The Taxpayer accounted for the service charges separately from the charges for the food and beverages. The money received from the service charges was used to pay the wait staff for serving the food and beverages at the particular event. There is no indication that the service charge was for anything but the wait staff's labor of serving and delivering the prepared food and beverages to the patrons of the banquet facility. Separately stated charges for the delivery and service of prepared food and beverages for consumption at that time in the Taxpayer's facility are exempt from the food and beverage tax.

FINDING

The Taxpayer's protest is sustained.

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