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**DEPARTMENT OF STATE REVENUE**  
**Revenue Ruling #2008-04ST**  
**April 24, 2008**

**NOTICE:** Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**Sales/Use Tax – Interior Design Services**

Taxpayer, an interior design company, performing design services, which may include purchasing tangible personal property from third-party vendors to implement the designs, is seeking an opinion as to the taxability of its purchases of the tangible personal property.

**STATEMENT OF FACTS**

Taxpayer, an interior design company, may purchase tangible personal property--i.e., furniture, floor coverings, and decorations, from third-party vendors to implement the interior design services it offers its customers. Currently, Taxpayer purchases the items from the third-party vendors and pays sales tax at the time of purchase. Then, Taxpayer separately itemizes the purchased property on its invoices to its customers to be reimbursed for the entire purchase price of the items including the sales tax.

Taxpayer is questioning whether:

1. If under the "sales for resale exemption" provided for in Indiana Code, 6-2.5-5-8, the prospective purchases of tangible personal property from third-party vendors by the Taxpayer, which are used to implement the interior design services provided by Taxpayer to clients, are exempt from Indiana sales tax?
2. If Taxpayer is exempt from Indiana sales tax under the "sales for resale exemption" for the purchases of tangible personal property and the Taxpayer's subsequent resale of the tangible personal property is to a tax-exempt client, is the entire transaction exempt from Indiana sales tax?

**DISCUSSION**

IC § 6-2.5-4-1, provided in relevant part, discusses retail transactions, as follows:

- (a) A person is a retail merchant making a retail transaction when he engages in selling at retail.
- (b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:
  - (1) acquires tangible personal property for the purpose of resale; and
  - (2) transfers that property to another person for consideration.
- (c) For purposes of determining what constitutes selling at retail, it does not matter whether:
  - (1) the property is transferred in the same form as when it was acquired;
  - (2) the property is transferred alone or in conjunction with other property or services; or
  - (3) the property is transferred conditionally or otherwise.

IC § 6-2.5-2-1 imposes a gross retail (sales) tax on retail transactions in Indiana. The legislature has provided a number of exemptions to the imposition of that tax. See IC § 6-2.5-5-1 to -40. One of those exemptions is provided at IC § 6-2.5-5-8(b) which states that, "Transactions involving tangible personal property... are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property."

The "sale for resale exemption" is further clarified at [45 IAC 2.2-5-15\(b\)](#), as follows:

General rule. Sales of tangible personal property for resale, rental or leasing are exempt from tax if all of the following conditions are satisfied:

- (1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;
- (2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and
- (3) The property is resold, rented or leased in the same form in which it was purchased.

However, pursuant to IC § 6-2.5-8-1(a), "A retail merchant may not make a retail transaction in Indiana, unless the retail merchant has applied for a registered retail merchant's certificate." Accordingly, in order for a taxpayer to qualify for the "sale for resale exemption," the taxpayer must be registered as a retail merchant to "resell" the property in retail transactions in the regular course of its business. Therefore, until the taxpayer has taken the steps to become a retail merchant, the taxpayer would not qualify for the "sale for resale exemption." Once a taxpayer is registered as a retail merchant under IC § 6-2.5-8-1, the taxpayer's purchases of tangible personal property for resale would be eligible to qualify for the "sale for resale exemption."

IC § 6-2.5-8-8, provides guidance on exemption certificates, as follows:

- (a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller

accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

(b) The following are the only persons authorized to issue exemption certificates:

(1) retail merchants, wholesalers, and manufacturers, who are registered with the department under this chapter;

(2) organizations which are exempt from the state gross retail tax under [IC 6-2.5-5-21](#), [IC 6-2.5-5-25](#), or [IC 6-2.5-5-26](#) and which are registered with the department under this chapter; and

(3) other persons who are exempt from the state gross retail tax with respect to any part of their purchases.

(c) The department may also allow a person to issue a blanket exemption certificate to cover exempt purchases over a stated period of time. The department may impose conditions on the use of the blanket exemption certificate and restrictions on the kind or category of purchases that are exempt.

(d) A seller that accepts an incomplete exemption certificate under subsection (a) is not relieved of the duty to collect gross retail or use tax on the sale unless the seller obtains:

(1) a fully completed exemption certificate; or

(2) the relevant data to complete the exemption certificate; within ninety (90) days after the sale.

(e) If a seller has accepted an incomplete exemption certificate under subsection (a) and the department requests that the seller substantiate the exemption, within one hundred twenty (120) days after the department makes the request the seller shall:

(1) obtain a fully completed exemption certificate; or

(2) prove by other means that the transaction was not subject to state gross retail or use tax.

Therefore, if a retail merchant receives a properly executed "exemption certificate," the seller has no duty to collect the sales tax for that transaction.

#### **RULING**

1. The Department rules that if Taxpayer is registered as a retail merchant as provided under IC § 6-2.5-8-1, Taxpayer's purchases of tangible personal property purchased with the intent to be resold would qualify for the "sale for resale exemption." If Taxpayer needs to register as a retail merchant, it needs to complete Form BT-1 and submit the requisite fee. [www.dor.in.gov](http://www.dor.in.gov).

2. The Department rules that if Taxpayer is a registered retail merchant accepting a properly executed "exemption certificate" from a purchaser, i.e. the tax-exempt entity, Taxpayer would not have a duty to collect sales tax for that transaction.

#### **CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

*Posted: 05/28/2008 by Legislative Services Agency*

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