

DEPARTMENT OF STATE REVENUE
Revenue Ruling #2008-05ST
April 25, 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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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 – Temporary Use Exemption

A company with an Indiana location is seeking an opinion on whether its mailings are subject to sales and use tax.

STATEMENT OF FACTS

The company purchases catalogs from an out-of-state printer, who does not charge Indiana sales tax. The printer ships approximately twelve percent of the catalogs directly to the company's customers. Of that twelve percent, five percent are shipped to Indiana addresses; the other ninety-five percent are shipped outside Indiana. The remaining eighty-eight percent are shipped to the company's Indiana location and used in the following manners:

1. Catalogs are given to customers visiting the company's Indiana showroom and retail store.
2. Catalogs are shipped to out-of-state trade shows for inclusion in handouts (give-away bags). The company's personnel do not take the catalogs to trade shows or hand them out; instead, the catalogs are shipped to the show organizers by common carrier for inclusion in trade show give-away bags.
3. Catalogs are sent to customers, both inside and outside Indiana, upon receipt of a request from the customer.
4. Catalogs are included in merchandise packaging with orders.
5. Obsolete catalogs are shredded and used as packaging materials as padding for products sold. This occurs when new catalogs are received.

DISCUSSION

[IC 6-2.5-3-2\(a\)](#) provides:

An excise tax, known as the use tax, 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 of the retail merchant making that transaction.

[IC 6-2.5-3-1](#) defines "storage" and "use" as:

- (a) "Use" means the exercise of any right or power of ownership over tangible personal property.
- (b) "Storage" means the keeping or retention of tangible personal property in Indiana for any purpose except the subsequent use of that property solely outside Indiana.

In *Miles, Inc. v. Indiana Dep't of State Revenue*, 659 N.E.2d 1158 (Ind. Tax Ct. 1995), the Indiana Tax Court held that the temporary storage of promotional materials for subsequent shipment outside Indiana did not constitute a taxable "use" of the property in Indiana. Under the *Miles* holding, the use of catalogs in Indiana depends on the ultimate location where the catalogs are ultimately located. The company ultimately locates the catalogs shipped to the company's Indiana showroom and retail store in Indiana. The rest are ultimately located depending on the location to which the catalogs are ultimately shipped.

RULING

1. Catalogs given to customer visiting the company's Indiana showroom and retail store are taxable.
2. Catalogs shipped via common carrier to out of state trade shows for inclusion in handouts are exempt.
3. Catalogs sent to customers at the customer's request are taxable if the customer is located in Indiana and exempt if the customer is located outside Indiana.
4. Catalogs included in merchandise packaging with orders are taxable if the merchandise is shipped within Indiana and exempt if the merchandise is shipped outside Indiana.
5. Obsolete catalogs shredded and used as packaging materials for products sold are taxable if the product is sold at an Indiana location or shipped to an Indiana customer and exempt if the product is shipped to an out-of-state customer.

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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