

**Letter of Findings Number: 07-0671
Sales and Use Tax
For the Tax Years 2004 - 2006**

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ISSUE

I. Sales and Use Tax – Imposition.

Authority: IC § 6-8.1-5-1(c); IC § 6-2.5-2-1(a); IC § 6-2.5-3-2(a); IC § 6-2.5-4-10(a).

The Taxpayer protests the imposition of use tax on the rental of equipment.

STATEMENT OF FACTS

The Taxpayer is a wholesaler of tangible personal property. The Indiana Department of Revenue (Department) audited the Taxpayer for the tax years 2004-2006. As a result of the audit, the Department assessed the Taxpayer with additional sales tax, use tax, interest, and penalty. The Taxpayer protested a portion of the assessment. A hearing was held and this Letter of Findings results.

I. Sales and Use Tax – Imposition.

DISCUSSION

In 2005, the Taxpayer suffered flood damage. The Taxpayer hired a company to dry their facility. The Department considered this transaction rental of equipment subject to the sales and use tax. The Taxpayer considered the transaction a fee paid for non-taxable services.

All tax assessments are presumed to be valid. IC § 6-8.1-5-1(b). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id.*

IC § 6-2.5-2-1(a) imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-3-2(a) imposes a complementary use tax on the storage, use or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction as defined for sales tax purposes and sales tax was not paid at the time of purchase. Rental transactions are defined as retail transactions subject to the sales and use tax at IC § 6-2.5-4-10(a). The provision of services is not subject to the sales or use tax unless the provision of the service is specifically defined as a retail transaction subject to the tax.

In this case, the invoice indicates that the Taxpayer was billed for both labor and for the rental of equipment such as air movers and dehumidifiers. The auditor only assessed use tax on the actual rentals of the equipment that are taxable pursuant to IC § 6-2.5-3-2(a).

FINDING

The Taxpayer's protest to the assessment of use tax on the rentals of equipment is denied.

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