

Letter of Findings Number: 07-0566
Sales Tax
For Tax Years 2004-06

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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

I. Sales Tax—Imposition.

Authority: IC § 6-2.5-3-7; IC § 6-2.5-8-8; IC § 6-8.1-5-1.

Taxpayer protests the assessment of sales tax.

STATEMENT OF FACTS

Taxpayer is a motorcycle retailer in Indiana. Taxpayer sells motorcycles and other motorized vehicles such as all-terrain vehicles and mules, along with accessories such as helmets. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer owed additional sales tax and use tax for several reasons, including: not collecting sales tax on taxable sales, not remitting all sales tax collected, and improper computation of sales tax due. The Department issued proposed assessments for sales and use tax, negligence penalty and interest. Taxpayer protests the imposition of a portion of the sales tax assessed. An administrative hearing was held and additional time was allowed for Taxpayer to submit a written protest explaining exactly what was being protested. No written explanation was received, therefore this Letter of Findings was written based on the information in the file and the hearing officer's notes from the administrative hearing. Further facts will be supplied as required.

I. Sales Tax—Imposition.

DISCUSSION

Taxpayer protests the imposition of sales tax on sales at the motorcycle retailer. Taxpayer protests that some of the items upon which sales tax was imposed were exempt sales. Also, Taxpayer protests that the Department over-estimated total sales and improperly imposed sales tax on the over-estimated amount. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

Taxpayer's first point of protest concerns what it believes were exempt sales. The Department's audit report used two different methods to calculate sales tax due. The report listed several large-ticket individual purchases for each year in question as one category. The audit report also listed other taxable sales as a category, which included all other sales. The individual items listed in the report were considered as taxable but not taxed or improperly taxed. The total taxable sales were calculated on pages 12-15 of the report. The Department added up total sales, removed the amounts of exempt sales which were verified, removed the sales where sales tax was previously remitted, and imposed sales tax on the difference.

Taxpayer states that several of the items listed by the Department were sold to individuals who either provided exemption certificates at the time of the sale or who had previously provided exemption certificates when purchasing other equipment. Taxpayer provided some copies of invoices and exemption certificates in support of its position that some of the sales in question were exempt. Of relevance is IC § 6-2.5-3-7, which states:

(a) A person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana, unless the person or the retail merchant can produce evidence to rebut that presumption.

(b) A retail merchant is not required to produce evidence of nontaxability under subsection (a) if the retail merchant receives from the person who acquired the property an exemption certificate which certifies, in the form prescribed by the department, that the acquisition is exempt from the use tax.

Also, IC § 6-2.5-8-8(a) states:

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.

Therefore, under IC § 6-2.5-3-7(b), Taxpayer is correct that it is not responsible for collecting and remitting sales tax on sales for which it has properly executed exemption certificates. A review of the invoices and exemption certificates provided in association with the individual purchases listed in the audit report shows that none of the invoices provided showed sales tax collected for the items upon which the Department imposed sales tax. None of the exemption certificates provided were properly filled out in the manner prescribed by the Department, as required by IC § 6-2.5-8-8(a). Therefore, Taxpayer has not met the burden of proving the

proposed assessments on the individually listed items wrong, as required by IC § 6-8.1-5-1(c).

Taxpayer also protests that the Department over-estimated total sales for the three years in question. Taxpayer provided some invoices and exemption certificates in support of its position. As previously explained, in the audit report the Department deducted exempt sales in its calculations of total sales subject to sales tax. While some of the invoices provided show that sales tax was collected on some sales and some exemption certificates were provided, there is insufficient documentation and nonexistent analysis to verify if the exempt sales and sales tax collected were or were not already taken into account by the Department. Therefore, Taxpayer has not met the burden imposed by IC § 6-8.1-5-1(c).

In conclusion, Taxpayer has not established that the individually listed items were either exempt or had valid exemption certificates. Also, Taxpayer has not established that the Department over-estimated the total amount of taxable sales subject to sales tax. Therefore, Taxpayer has not met the burden of proving the proposed assessments wrong, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

Posted: 07/30/2008 by Legislative Services Agency

An [html](#) version of this document.