

**Letter of Findings: 07-0612**  
**Sales Tax**  
**For the Years 2004, 2005, 2006**

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**ISSUE**

**I. Sales Tax – Imposition.**

**Authority:** IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-4-10; IC § 6-8.1-5-1(c); [45 IAC 2.2-2-1](#); [45 IAC 2.2-4-27](#); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the imposition of sales tax on some items.

**STATEMENT OF FACTS**

Taxpayer is a Kentucky corporation in the business of renting, selling, and servicing construction equipment. Taxpayer's customers, mostly construction contractors, are primarily located in the Louisville, Kentucky, and southern Indiana areas. Taxpayer mostly delivers to its customers' job sites in its own vehicles or via common carrier. The bulk of Taxpayer's revenue is from rentals, as opposed to sales.

The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayer for the years 2004, 2005, and 2006. Taxpayer agreed to a sales sample and projection audit. In accordance with the projection agreement, the audit selected one month per year and examined all sales and rental invoices for that month. For each year, the audit selected the month that was the closest to the average monthly sales. The Department assessed additional sales tax and interest. Taxpayer protested one issue in the audit. A hearing was held on the protest. This Letter of Findings ensues. Additional facts will be provided as necessary.

**I. Sales Tax – Imposition.**

**DISCUSSION**

The Department's audit found that Taxpayer failed to remit sales tax to Indiana on rental billings for equipment picked up by Indiana customers at Taxpayer's location in Kentucky but which was subsequently removed to Indiana (Taxpayer remitted sales tax on these transactions to Kentucky). The Department's audit stated that when an Indiana customer picks up a rental item in Kentucky the initial billing is taxable to Kentucky; however, subsequent billings to the customer in Indiana are taxable to Indiana. The Department made its assessment pursuant to [45 IAC 2.2-2-1](#) generally, and [45 IAC 2.2-4-27](#) which specifically imposes a sales tax on the rental of tangible personal property in Indiana. For convenience, this Letter will refer to the transactions at issue as "subsequent Indiana rentals."

Taxpayer states that it has been in business for nearly fifty years and is a member of several rental associations, none of which advised or were aware of an obligation to pay sales tax on these subsequent Indiana rentals. Taxpayer further states that once it was informed about this issue, it placed safeguards into its accounting system to monitor subsequent rentals in order to remit the sales tax to the correct state. Taxpayer asks to be relieved of this portion of the assessment since this was not willful error.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

"An excise tax, known as the state gross income tax, is imposed on retail transactions made in Indiana." IC § 6-2.5-2-1(a). A "retail transaction" is defined in IC § 6-2.5-1-2 as "a transaction of a retail merchant that constitutes selling at retail." "A person... is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person." IC § 6-2.5-4-10(a). In general, the gross receipts from renting or leasing tangible personal property are taxable. [45 IAC 2.2-4-27](#). This regulation only exempts from tax those transactions which would have been exempt in an equivalent sales transaction. *Id.*

IC § 6-2.5-2-1 provides:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

[IC 6-2.5-4-10](#) states in relevant part:

- (a) A person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person other than for subrent or sublease.
- (b) A person is a retail merchant making a retail transaction when the person sells any tangible personal property which has been rented or leased in the regular course of the person's rental or leasing business.

[45 IAC 2.2-4-27](#) states in relevant part:

(a) In general, the gross receipts from renting or leasing tangible personal property are taxable. This regulation [\[45 IAC 2.2\]](#) only exempts from tax those transactions which would have been exempt in an equivalent sales transaction.

(b) Every person engaged in the business of the rental or leasing of tangible personal property, other than a public utility, shall be deemed to be a retail merchant in respect thereto and such rental or leasing transaction shall constitute a retail transaction subject to the state gross retail tax on the amount of the actual receipts from such rental or leasing.

(c) In general, the gross receipts from renting or leasing tangible personal property are subject to tax. The rental or leasing of tangible personal property constitutes a retail transaction, and every lessor is a retail merchant with respect to such transactions. The lessor must collect and remit the gross retail tax or use tax on the amount of actual receipts as agent for the state of Indiana. The tax is borne by the lessee, except when the lessee is otherwise exempt from taxation.

(d) The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

(2) Rental or lease period. For purposes of the imposition of the gross retail tax or use tax on rental or leasing transactions, each period for which a rental is payable shall be considered a complete transaction. In the case of a weekly rate, each week shall be considered a complete transaction. In the case of a continuing lease or contract, with or without a definite expiration date, where rental payments are to be made monthly or on some other periodic basis, each payment period shall be considered a completed transaction.

There is no dispute in this case that Taxpayer is generally a retail merchant selling at retail in Indiana and therefore had a duty to collect and remit Indiana sales tax on its lease transactions in the state. The critical question is whether the subsequent transactions at issue are subject to Indiana sales tax. Is the initial lease transaction that takes place in Kentucky and which is taxable to Kentucky determinative of how the subsequent billings are taxed, or do the subsequent billings relate to transactions in Indiana which would therefore be taxable to Indiana?

[45 IAC 2.2-4-27\(d\)\(2\)](#) clearly states that each billing period of a rental represents the period for a complete transaction. Therefore, the subsequent billings to Taxpayer's customers in Indiana are indeed separate, consecutive transactions that take place in Indiana and are therefore subject to Indiana sales tax. The Department's audit, therefore, correctly assessed Indiana sales tax on these transactions.

Taxpayer's protest requests waiver of the assessment because it, as an experienced retailer in the construction equipment rental business, was not aware of this discrete application of Indiana law and proceeded to amend its business practices to properly remit tax to Indiana on these subsequent transactions. Taxpayer makes an equity argument which cannot be addressed in a Letter of Findings. The Department, however, correctly recognized Taxpayer's position in this regard and did not assess a negligence penalty against Taxpayer.

#### **FINDING**

Taxpayer's protest is respectfully denied.

*Posted: 10/01/2008 by Legislative Services Agency*

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