

Supplemental Letter of Findings Number: 07-0639
Sales and Use Tax
For the Tax Years 2004-2006

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ISSUE

I. Use Tax – Imposition.

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

The Taxpayer protests the assessment of use tax.

STATEMENT OF FACTS

The Taxpayer is a non-store retailer who sells products such as cosmetics, vitamins, and cleaners. She is also a real estate agent. The Indiana Department of Revenue (Department) audited the Taxpayer for the tax years 2004-2006. The audit resulted in an assessment of sales tax, use tax, interest, and penalty. The Taxpayer protested the assessments. A hearing was held and a Letter of Findings issued on May 14, 2008. The Taxpayer requested a rehearing to present additional documentation that she did not have at the time of the original hearing. The Taxpayer's request was granted, the documentation was reviewed, and this Supplemental Letter of Findings results.

ISSUE

I. Use Tax – Imposition.

DISCUSSION

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.* Taxpayers have the duty to maintain books and records and present those to the Department for review upon the Department's request. IC § 6-8.1-5-4(a).

IC § 6-2.5-2-1(a) imposes sales tax on retail transactions made in Indiana. Indiana also imposes a complementary transactional tax, the 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. IC § 6-2.5-3-2(a). There is no provision in the Indiana law imposing the use tax on the provision of services. The Department assessed use tax on several of the Taxpayer's purchases. The Taxpayer protested these assessments.

The Taxpayer protested the assessment of use tax on materials valued at \$1,951. The Taxpayer provided adequate documentation at the supplemental hearing demonstrating that this payment was for the provision of services rather than the purchase of tangible personal property. The sales and use taxes are transactional taxes imposed on the purchase and use of tangible personal property. Indiana does not impose a comparable tax on the provision of services. Therefore, the Taxpayer sustained her burden of proving that the Department incorrectly imposed the use tax on the item listed in the audit as materials for \$1,951.

The Taxpayer also protested the assessment of use tax on materials and supplies purchased with a credit card. She argued that she had already paid sales tax on these items. In support of this contention, the Taxpayer submitted credit card statements. The statements merely indicate a total price paid. There is no indication on the statements whether or not the Taxpayer paid sales tax on the purchases. Therefore, the Taxpayer did not sustain her burden of proving that she had already paid sales tax on these purchases. The Department properly imposed use tax on the materials and supplies the Taxpayer purchased with a credit card.

Finally, the Taxpayer protested the assessment of use tax on equipment listed on page 10 of the audit for \$364. The Taxpayer argued that this cost was not the cost to purchase the equipment. Rather, the Taxpayer already owned the equipment and paid a moving company this amount to transport the equipment from Indianapolis to another city in the state. At the supplemental hearing, the Taxpayer provided an invoice from the moving company demonstrating that the fee was paid for the transport of the equipment. Moving tangible personal property is the provision of a service rather than the sale of tangible personal property. Indiana does not impose the transactional sales and use taxes on the provision of a service. Therefore, the Taxpayer sustained her burden of proving that the Department incorrectly imposed use tax on the provision of the service of moving the Taxpayer's equipment.

FINDING

The Taxpayer's protest to the imposition of use tax on the item listed as materials for \$1,951 and the item listed as transportation of equipment listed as \$364 are sustained. The remainder of the Taxpayer's protest is respectfully denied.

CONCLUSION

The Taxpayer's protest to the assessment of use tax on the purchase of the item listed in the audit as materials in the amount of \$1,951 is sustained.

The Taxpayer's protest to the assessment of use tax on materials purchased with credit cards is denied.

The Taxpayer's protest to the assessment of use tax in the amount of \$364 on the item listed in the audit as equipment is sustained.

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