

Letter of Findings: 07-0616
Gross Retail Tax
For the Years 2004, 2005, and 2006

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ISSUE

I. Taxpayer Provided Equipment – Gross Retail Tax.

Authority: IC § 6-2.5-1-1 et seq.; IC § 6-2.5-3-8(a); IC § 6-8.1-5-1(b); IC § 6-8.1-5-1(c); [45 IAC 2.2-3-4](#).

Taxpayer argues that the imposition of additional use tax on equipment taxpayer provides to its customers was incorrect.

STATEMENT OF FACTS

Taxpayer is an Indiana business which sells popcorn poppers, hot dog roasters, cotton candy machines, food supplies, and other food equipment. The Department of Revenue (Department) conducted an audit review of taxpayer's sales tax records and returns finding that taxpayer had properly collected sales tax from its customers and remitted the tax to the state. However, the audit found that taxpayer had purchased items of equipment for which it owed use tax and issued an audit report to that effect. Taxpayer disagreed with the proposed use tax assessments and submitted a protest. The matter was assigned to a hearing officer, an administrative hearing was scheduled, but taxpayer failed to attend. On the assumption that taxpayer wished to have the disputed assessments resolved based upon the information contained within the file and on the information accompanying the initial protest, this Letter of Findings was prepared.

I. Taxpayer Provided Equipment – Gross Retail Tax.

DISCUSSION

IC § 6-8.1-5-1(b) states that "[i]f the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available." The initial audit determination of taxpayer's liabilities arrives with a presumption of correctness. IC § 6-8.1-5-1(c) states that "[t]he notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

In Indiana, a sales tax is imposed on retail transactions and a complementary use tax is imposed on tangible personal property that is stored, used, or consumed in the state. IC § 6-2.5-1-1 et seq.

In determining whether tangible personal property is subject to use tax, IC § 6-2.5-3-8(a) provides that "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."

The audit found that "taxpayer is providing equipment to the customer at no charge on the condition that all of the products and supplies needed to use that particular machine be purchased from the taxpayer." The audit report stated that these items of equipment are "logged into inventory but the taxpayer still maintains ownership and is responsible for the repairs of the equipment." The audit found that this equipment was "being used and stored in the State and [was] subject to use tax." As authority, the audit report cited to [45 IAC 2.2-3-4](#) which states that "Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana gross retail tax has been collected at the point of purchase."

The issue is whether taxpayer has met its burden of proof under IC § 6-8.1-5-1(c) sufficient to rebut the presumption set out in IC § 6-2.5-3-8(a) that the equipment purportedly loaned to its customers was subject to use tax.

Taxpayer states that the equipment is not lent to its customers but "is inventory for resale absolutely and positively." Specifically, taxpayer states that the equipment is either "sold or leased to the taxpayer[]"s customers in the ordinary course of business."

Taxpayer makes multiple, ambiguous arguments. Taxpayer states that the equipment at issue is sold to its customers but the documentation submitted to support that assertion indicates that taxpayer is not citing to the equipment for which taxpayer was assessed use tax. In other words, the audit report and taxpayer's response each refer to different items of equipment. Alternatively, taxpayer states that the equipment is being rented to its customers on a periodic basis. However, taxpayer was unable to produce copies of lease agreements, to document the terms of these agreements it had with its customers, or to demonstrate that it collected rent from its customers. In later correspondence with the Department, taxpayer states that it leases the equipment to its customers but only assesses a one-time rental charge regardless of the amount of time the customers might

retain the equipment. However, taxpayer again has failed to document that the items of equipment specifically at issue in its protest are leased to its customers.

Taxpayer apparently purchases certain items of food preparation equipment which it allows customers to use with the understanding that the customers will purchase the requisite supplies from taxpayer. Under IC § 6-2.5-3-8(a), that equipment is "presumed" to have been used in Indiana. The audit properly relied on that statutory presumption and taxpayer's arguments to the contrary were insufficient to rebut that presumption. With the use tax assessments having been issued, it was taxpayer's responsibility under IC § 6-8.1-5-1(c) to demonstrate that the assessments were incorrect. Taxpayer's arguments are ambiguous and unsubstantiated, and the Department is unable to agree that the assessments should be set aside because taxpayer has failed to meet its "burden of *proving* that the proposed assessment is wrong...." IC § 6-8.1-5-1(c) (*Emphasis added*).

FINDING

Taxpayer's protest is respectfully denied.

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