

## DEPARTMENT OF STATE REVENUE

04-20080064.LOF

**Letter of Findings Number: 08-0064**  
**Sales and Use Tax**  
**For the Tax Period 2005 - 2006**

**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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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 and Use Tax – Imposition.**

**Authority:** IC § 6-2.5-2-1(a); IC § 6-2.5-5-15; IC § 6-8.1-5-1(b)(c); [45 IAC 15-11-2](#)(b); Indiana Dep't of State Revenue v. Interstate Warehousing, 783 N.E.2d 248 (Ind. 2003).

The Taxpayer protests the assessment of sales tax.

**STATEMENT OF FACTS**

The Taxpayer is a corporation selling used cars. After an audit for the tax period 2005-2006, the Indiana Department of Revenue (Department) assessed additional sales tax and interest. The Taxpayer protested the assessment of sales tax. A telephone hearing was held and this Letter of Findings results.

**I. Sales and Use Tax – Imposition.**

**DISCUSSION**

Prior to July 1, 2004, IC § 6-2.5-5-15 provided an exemption to the imposition of the sales tax for the purchase of cars in Indiana that were immediately taken out of state to be titled in that other state. The Taxpayer's business practice during this period was to have the purchaser sign an affidavit stating that the purchaser met the requirements to qualify for this exemption. When the purchaser signed the affidavit, the Taxpayer did not collect the sales tax on behalf of the state. On July 1, 2004, the exemption for cars immediately taken out of state for titling was repealed. The Taxpayer alleges that she was not notified of the change in law until the audit. After notification of the change in law, the Taxpayer began to collect and remit sales tax on cars taken immediately to other states for titling. The Department assessed sales tax on the cars that the Taxpayer sold during 2005-2006 that would have been exempt prior to the repeal of the exemption for cars immediately taken out of state and titled in another state. The Taxpayer protested this assessment.

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. IC § 6-8.1-5-1(c). Exemption statutes are strictly construed against the Taxpayer. Indiana Dep't of State Revenue v. Interstate Warehousing, 783 N.E.2d 248, 250 (Ind. 2003).

IC § 6-2.5-2-1(a) imposes sales tax on retail transactions made in Indiana. Since IC § 6-2.5-5-15 was repealed effective July 1, 2004, the Taxpayer should have collected sales tax on the cars sold to be immediately taken out of state for titling. Taxpayers have the responsibility to remain informed about changes in the law. [45 IAC 15-11-2](#)(b). In this situation, the Taxpayer did not collect and remit sales tax as required by law. The Department properly assessed the sales tax against the Taxpayer.

**FINDING**

The Taxpayer's protest is respectfully denied.

*Posted: 11/26/2008 by Legislative Services Agency*

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