

**Letter of Findings: 08-0725**  
**Sales and Use Tax**  
**For the Tax Periods May 1, 2006, through June 30, 2007**

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-5-4.

Taxpayer protests the imposition of use tax.

**STATEMENT OF FACTS**

Taxpayer has business operations in Indiana. Taxpayer distributed promotional CDs and materials to Indiana residents. Taxpayer remitted use tax to the Department based upon the percentage of materials—i.e., postcards, greeting cards, letters, and envelopes—it distributed into Indiana. Taxpayer filed a claim for refund for the use taxes on these promotional CDs and other promotional materials with respect to the tax periods May 1, 2006, through June 30, 2007. Pursuant to an investigation, the Indiana Department of Revenue ("Department") denied Taxpayer's refund claims and assessed additional use tax for the 2006 and 2007 tax years. Taxpayer protested both the refund denials and the tax assessments. An administrative hearing was held, and this Letter of Findings results. This determination letter will address the tax assessment issue. Another determination letter will address the refund denial issue. Further facts will be supplied as required.

**I. Use Tax— Imposition.**

**DISCUSSION**

Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

The Department found errors in the calculation that Taxpayer used to accrue the amount of Indiana use tax it remits to the Department each year. Taxpayer remitted use tax to the Department based upon the percentage of the materials it distributed into Indiana. The Department found errors in Taxpayer's use tax accrual calculation with respect to the "membership percentage" figure it used for Indiana.

The Department determined that Taxpayer failed to update its "membership percentage" figure for Indiana. On February 28, 2004, Taxpayer had determined its relative Indiana membership to be 1.94 percent. Prior to this date, Taxpayer had determined its relative Indiana membership to be 1.61 percent as of March 7, 1998. Taxpayer in its use tax accrual calculation had failed to adjust its "membership percentage" to 1.94 percent for all periods after February 28, 2004, except for the month of April in 2004. The Department's investigation, adjusted the "membership percentage" to 1.94 percent for all the relevant tax periods, May 1, 2006, through June 30, 2007.

Taxpayer asserts that its "membership percentage" figure was only 1.84 percent for the tax periods from January 2006 through March of 2007. During the course of the protest, Taxpayer submitted an affidavit to demonstrate that Taxpayer's "membership percentage" was only 1.84 percent. However, Taxpayer failed to provide any documentation to support the original assertion or this assertion in the affidavit. In addition, Taxpayer did not cite any statute, regulation, or case law for the proposition that the Department was required to accept Taxpayer's assertion without providing the supporting documentation.

In fact, IC § 6-8.1-5-4(a) provides:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect. Since Taxpayer has failed to provide documentation that demonstrates its "membership percentage" figure was not 1.94 percent, Taxpayer has failed to meet its burden of proof.

**FINDING**

Taxpayer's protest is respectfully denied.

*Posted: 02/18/2009 by Legislative Services Agency*

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