

Letter of Findings Number: 08-0481
Sales and Use Tax
For Tax Years 2002-2006

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ISSUE

I. Sales and Use Tax—Imposition.

Authority: IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-8.1-5-1; IC § 6-8.1-5-4; Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessment of use tax on a variety of purchases.

STATEMENT OF FACTS

Taxpayer constructs log homes operating as a lump sum contractor. After an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer owed additional sales and use tax and assessed penalties for the tax years 2002, 2003, 2004, 2005, and 2006. Taxpayer did not file any income tax or sales tax returns for these periods. Taxpayer either failed to retain or failed to make its sales or purchase invoices available to the Department. Since Taxpayer had otherwise inadequate books and records, the assessments were made based upon the best information available to the Department, which included the taxpayer's cancelled checks and purchase invoices that were provided to the Department by Taxpayer's suppliers. The Department found that Taxpayer had made a variety of purchases on which sales tax was not paid at the time of purchase nor was use tax remitted to the Department. Taxpayer protests the imposition of tax on certain of its purchases.

I. Sales and 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. Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

IC § 6-2.5-3-2(a) provides, "An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." An exemption from the use tax is granted for transactions where the gross retail tax ("sales tax") was paid at the time of purchase pursuant to IC § 6-2.5-3-4. Since Taxpayer failed to pay sales tax at the time of purchase, the Department found that the purchases were subject to use tax.

A. Other Entities.

Taxpayer asserts that the use tax should not have been assessed to Taxpayer as a sole proprietor, and that the use tax for these purchases is actually due from certain other log home building entities ("other entities") that were owned by Taxpayer. Taxpayer also maintains that these liabilities are actually the liabilities of a log home building corporation, which it formed in 2006 as the sole shareholder. Taxpayer argues that this corporation purchased all of the assets and liabilities of these other entities including all of its sole proprietor operations. However, Taxpayer has failed to provide any evidence that this corporation or any other entity transacted any of the specific business activities assessed in the audit, or any business in Indiana. In fact, none of these other entities including the corporation kept any books or records showing business activity or filed any federal or state tax returns reporting business activity.

During the course of the protest, Taxpayer stated that it would like time to file separate use tax returns to represent the liability of each entity and provide the underlying documentation supporting these filings. After the Department allowed Taxpayer more than forty-five days to provide this documentation, Taxpayer failed to submit any additional information. Moreover, Taxpayer did not cite any statute, regulation, or case law for the proposition that the Department was required to accept Taxpayer's assertions as to the nature of these transactions 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 produce documentation that demonstrates that the Department's assessment was incorrectly assessed to the sole proprietorship(s), Taxpayer has not met its burden of proving the proposed assessment wrong.

Therefore, Taxpayer's protest is respectfully denied.

B. Other Disputes.

Taxpayer asserts that it was assessed use tax for the same materials twice, on items on which sales tax was paid at the time of purchase, on items that were purchased and resold, and in otherwise incorrect amounts for certain purchases.

During the course of protest, Taxpayer submitted various purchase invoices to support its assertions. Taxpayer has provided sufficient documentation to demonstrate that the following purchases should be removed from the assessment:

- 4/12/02 materials, reference no. 11043, amount \$14,465.00
- 7/02/02 materials, reference no. 11052, amount \$3,540.00
- 7/25/02 materials, reference no. 11060, amount \$527.31
- 11/21/02 materials, reference no. 11085, amount \$2,585.00
- 4/07/03 materials, reference no. 11167, amount \$6,245.00
- 5/19/03 materials, reference no. 5172, amount \$2,972.94
- 4/02/03 materials, reference no. 11163, amount \$3,246.00
- 7/14/03 materials, reference no. 5189, amount \$726.12
- 11/05/04 materials, reference no. 5335, amount \$343.20
- 1/18/05 materials, reference no. 5157, amount \$2,000.00
- 9/19/05 materials, reference no. 1778, amount \$160.59
- 2/24/05 materials, reference no. 5398, amount \$2,440.79
- 4/18/05 materials, reference no. 5436, amount \$877.90
- 6/07/05 materials, reference no. 11709, amount \$4,486.27
- 4/1/05 materials, reference no. 11572, amount \$858.08
- 5/16/05 materials, reference no. 11686, amount \$983.29
- 8/29/05 materials, reference no. 1768, amount \$1,102.72

Therefore, Taxpayer's protest, as it pertains to the above listed purchases, is sustained subject to the findings of a supplemental audit.

Taxpayer has also provided sufficient documentation to demonstrate that the purchases listed before were incorrectly assessed and should be corrected, as follows:

- 8/06/03 materials, reference no. 5199, assessed \$3,373.45, correct amt. \$554.13
- 3/26/03 materials, reference no. 5159, assessed \$1,481.03, correct amt. \$662.47
- 9/23/03 materials, reference no. 5037, assessed \$62.28, correct amt. \$66.47
- 4/18/05 materials, reference no. 5435, assessed \$1,288.43, correct amt. \$19.33
- 5/31/05 materials, reference no. 5435, assessed \$8,691, correct amt. \$198,786.00

Therefore, Taxpayer's protest, as it pertains to the above listed purchases, is sustained subject to the findings of a supplemental audit.

However, the documents submitted were insufficient to prove that the Department's assessment was incorrect for any of Taxpayer's other purchases that are not included in the above two lists. Since Taxpayer failed to produce any documentation that demonstrates that the Department's assessment was incorrect for its other purchases, then Taxpayer has failed to meet its burden of proof for those purchases. Therefore, Taxpayer's protest, as it relates to those purchases, is denied.

FINDING

Taxpayer's protest is sustained in part and denied in part.

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