

Letter of Findings: 09-0686
Use Tax
For the Years 2006, 2007, and 2008

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ISSUE

I. Use Tax – Imposition.

Authority: IC § 6-2.5-1-27; IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Sales Tax Information Bulletin 8 (May 2002).

Taxpayer protests the imposition of use tax.

STATEMENT OF FACTS

Taxpayer is an Indiana dealer which sells new and used cars. Pursuant to an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer owed additional use tax and assessed tax and interest for the 2006, 2007, and 2008 tax years. The Department determined that Taxpayer had made a variety of purchases without either paying sales tax or self-assessing and remitting use tax to the Department. Taxpayer protested the tax assessment. A hearing was held, and this Letter of Findings results. Additional facts will be provided as necessary.

I. Use Tax – Imposition.

DISCUSSION

As a threshold matter, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

The Department found that Taxpayer had purchased credit reports and vehicle reports without paying sales tax at the time of purchase or remitting use tax to the Department.

Pursuant to IC § 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. Retail transactions involve the transfer of tangible personal property. IC § 6-2.5-3-2(a). A complementary 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. IC § 6-2.5-3-2. An exemption from the use tax is granted for transactions when 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 the purchase, the Department found that the purchases were subject to use tax.

A. Credit/Vehicle Reports: Experian, Car Fax, and/or TransUnion.

Taxpayer asserts that the costs for the credit/vehicle reports constitute services that are not subject to sales and use tax. Taxpayer stated that it subscribed to services from a vendor-repository—i.e., Experian, Car Fax, and/or TransUnion—that provided credit/vehicle reports to Taxpayer under the respective service agreement. Taxpayer maintains that "there is no report available to purchase until information is furnished by Taxpayer. When that information is provided the vendor compiles the report and sells the finished report to the Taxpayer." Taxpayer also maintains that the vendor(s) "provide the credit information... for the exclusive use of the taxpayer for a specific purpose and only if the taxpayer requests the information by providing specific confidential input."

During the course of the protest, Taxpayer provided sample invoices from each vendor that indicated that Taxpayer was billed a certain set amount for each report provided to Taxpayer. Taxpayer also provided "agreements" from Experian, Car Fax, and TransUnion, which also detail the amounts that Taxpayer would be charged per report. Nowhere in the agreements does Taxpayer gain exclusive use and right of control of compiled information, which was supplied by Taxpayer to the vendor to be merely organized by the vendor. Nowhere in the agreements does Taxpayer gain exclusive right to any specific information. Nowhere in the agreements does Taxpayer specify that vendors collect specific and customized information for Taxpayer to become the sole owner of the information.

In fact, the typical arrangement for these credit/vehicle reports works as follows: with a user-name and password given by the vendor-repository, Taxpayer can search, retrieve, and print what is produced and offered by the vendor-repository. Upon Taxpayer's demand, i.e., entering the search term or terms (typically an individual's name or vehicle's VIN number), the vendor-repository transferred the credit/vehicle reports to Taxpayer and Taxpayer then paid the vendor-repository for the credit/vehicle reports based on the volume of the reports Taxpayer purchased. Taxpayer received the credit/vehicle reports, either in printout form, by electronically storing them in its computer, or simply by viewing the generated reports. Essentially, Taxpayer requested an individual credit/vehicle report for one of its potential customers and was billed for each credit/vehicle report

requested depending on the type of report requested of which the prices vary. The issue is whether this "information" or credit/vehicle report is subject to sales tax and use tax.

The issue of whether that "information" is subject to sales and use tax is addressed in the Sales Tax Information Bulletin 8 (May 2002) which states as follows:

The sale of statistical reports, graphs, diagrams or any other information produced or compiled by a computer and sold or reproduced for sale in substantially the same form as it is so produced is considered to be the sale of tangible personal property unless the information from which such reports was compiled was furnished by the same person to whom the finished report is sold.

Taxpayer purchases credit/vehicle reports. The vendor-repository compiled the individual credit/vehicle information, in report formats, and sold the reports in substantially the same form as they were so produced. Taxpayer did not contract with the vendor to perform and provide a service, such as collecting specific and customized information or compiling Taxpayer's information. Instead, Taxpayer purchased the completed products, i.e., credit reports/vehicle reports, after the vendor compiled and furnished standard information in the standard report formats. The reports consist of information "compiled by a computer [and] sold or reproduced for sale in substantially the same form as it is so produced...." Therefore, the reports – by whatever means transmitted – constitute "tangible personal property" obtained in a retail transaction. Pursuant to Sales Tax Information Bulletin 8, the credit reports/vehicle reports are tangible personal property and, therefore, taxable. Since Taxpayer did not pay sales tax at the time of the purchases, use tax is properly imposed.

B. Sales Master Systems.

Taxpayer asserts that the costs for the Sales Master System constitute services that are not subject to sales and use tax. Taxpayer stated that it subscribed to services under a service agreement.

During the course of the protest, Taxpayer provided a sample invoice from the vendor that indicated that Taxpayer was billed a certain amount for the "Sales Master System." Taxpayer also provided a document entitled, "Software Agreement," which is the contract for "Sales Master System," which "grants [Taxpayer] a nonexclusive license (the "License") to use the Software that is delivered." The vendor's website includes the "Sales Master System" in its list of computer software that is available to be purchased by the general public. Accordingly, Taxpayer purchased prewritten computer software from the vendor.

Pursuant to IC § 6-2.5-1-27, "tangible personal property... includes prewritten computer software." Therefore, when Taxpayer purchased the computer software, Taxpayer purchased tangible personal property, which is subject to tax. Since Taxpayer purchased the software without paying sales tax at the time of purchase, use tax is properly imposed.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 03/24/2010 by Legislative Services Agency
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