

## DEPARTMENT OF STATE REVENUE

04-20090485.LOF

**Letter of Findings Number: 09-0485**  
**Use Tax**  
**For Tax Years 2006-2007**

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**ISSUE****I. Use Tax—Imposition.**

**Authority:** IC § 6-8.1-5-1.

Taxpayer protests the imposition of use tax.

**STATEMENT OF FACTS**

Taxpayer operates a full-service heating and air conditioning business in Indiana. Taxpayer sells, installs, and performs repair services on heating and cooling systems. Taxpayer operates as a lump sum contractor for new unit sales and as a time and materials contractor for the repair services it performs. After an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer owed additional use tax and assessed tax, interest, and negligence penalties for the 2006 and 2007 tax years. The Department found that Taxpayer had purchased a variety of materials without either paying sales tax at the time of purchase or remitting use tax to the Department. The Department also determined that Taxpayer underreported the amounts of use tax due on its Form ST-103s because the amounts reported varied from the amounts that Taxpayer had accrued in its books and records. Taxpayer protested the imposition of use tax that was based upon the difference between the form ST-103s and Taxpayer's books. An administrative hearing was held, and this Letter of Finding results.

**I. Use Tax—Imposition.****DISCUSSION**

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

The Department determined that Taxpayer underreported the amounts of use tax due on its Form ST-103s because the amounts reported varied from the amounts that Taxpayer had accrued in its books and records. Taxpayer maintains that this additional tax due is overstated.

During the course of the protest, Taxpayer presented several invoices, exemption certificates, and other documentation that was not originally presented to the Department during the audit. The Audit Division is requested to review Taxpayer's newly presented documentation and to determine the amount of adjustment it deems appropriate. Thus, Taxpayer's protest is sustained subject to the results of that supplemental audit.

**FINDING**

Taxpayer's protest is sustained subject to findings of the supplemental audit performed by the Audit Division.

*Posted: 04/28/2010 by Legislative Services Agency*

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