

Letter of Findings: 09-0726
Sales Tax
For the Tax Years 2005-2008

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ISSUE

I. Gross Retail Tax—Telecommunications Equipment.

Authority: IC § 6-2.5-5-13; [170 IAC 7-2.1-1](#); 47 CFR § 32; 47 CFR § 32.2423; 47 CFR § 32.6423; Tri-States Double Cola Bottling Co. v. Dep't of State Revenue, 706 N.E.2d 282 (Ind. Tax Ct. 1999); Mynsberge v. Dep't of State Revenue, 716 N.E.2d 629 (Ind. Tax Ct. 1999).

Taxpayer argues that the Department erred in denying a refund of sales tax it paid for and assessing sales tax on its purchases of certain "telecommunications equipment."

STATEMENT OF FACTS

Taxpayer is a telecommunications company. According to Taxpayer, it purchased exempt equipment and supplies but erroneously paid Indiana sales tax and/or remitted use tax to the Department on the purchases. Taxpayer submitted to the Department of Revenue (Department) a request for refund for sales and use taxes paid during the tax periods from January 1, 2005, through August 27, 2008. The Department of Revenue (Department) conducted an audit review of Taxpayer's business records. As a result of the audit, the Department granted Taxpayer's refund claim in part, denied Taxpayer's refund claim in part, and determined that Taxpayer owed additional use tax. Taxpayer's claim was denied in part and additional taxes were assessed because the Department determined that Taxpayer failed to pay sales and use tax on or claimed exemptions for purchases that were not "central office equipment, station equipment, or apparatus." Taxpayer protests certain of the purchases for which the refunds were denied and certain of the purchases on which use tax was assessed. A hearing was held, and this Letter of Findings results.

I. Gross Retail Tax—Telecommunications Equipment.

DISCUSSION

Taxpayer protests the refund denials and assessments maintaining that the equipment in question qualifies for the "telecommunications equipment exemption" that is found in IC § 6-2.5-5-13. The Department determined the items purchased were not "central office equipment, station equipment, or apparatus" and, therefore, did not qualify for the exemption.

The "telecommunications equipment exemption" is provided in IC § 6-2.5-5-13 (as in effect for the tax years in question), as follows:

Transactions involving tangible personal property are exempt from the state gross retail tax, if:

(1) the property is:

(A) classified as central office equipment, station equipment or apparatus, station connection, wiring, or large private branch exchanges according to the uniform system of accounts which was adopted and prescribed for the utility by the Indiana utility regulatory commission;

(B) mobile telecommunications switching office equipment, radio or microwave transmitting or receiving equipment, including, without limitation, towers, antennae, and property that perform a function similar to the function performed by any of the property described in clause (A).

(2) the person acquiring the property furnishes or sells intrastate telecommunication service in a retail transaction described in [IC 6-2.5-4-6](#).

IC § 6-2.5-5-13(1), like all tax exemption provisions, is strictly construed against exemption from the tax. Tri-States Double Cola Bottling Co. v. Dep't of State Revenue, 706 N.E.2d 282, 283 (Ind. Tax Ct. 1999); Mynsberge v. Dep't of State Revenue, 716 N.E.2d 629, 636 (Ind. Tax Ct. 1999).

A. "Telephone Equipment."

Taxpayer protests the assessment of use tax on and the denial of its refund claim on the sales tax paid and use tax remitted on its purchases of certain types of "telephone equipment"—i.e., the "cables, fibers, innerducts, ground wires, and an equalization module presses." Taxpayer maintains that these purchases are "classified as central office equipment, station equipment or apparatus, station connection, wiring, or large private branch exchanges according to the uniform system of accounts which was adopted and prescribed for the utility by the Indiana utility regulatory commission."

The "cables, fibers, innerducts, ground wires, and an equalization module presses" are all classified in the accounts entitled "buried cable" as found in 47 CFR § 32.2423 and 47 CFR § 32.6423. Pursuant to IC § 6-2.5-5-13, property that is used by telecommunications providers to provide telecommunications services that is "classified as central office equipment, station equipment or apparatus, station connection, wiring, or large private

branch exchanges according to the uniform system of accounts which was adopted and prescribed for the utility by the Indiana utility regulatory commission" is exempt from sales and use tax. The state has adopted by reference the federal rules and regulations prescribing "the Uniform System of Accounts" accounts for use by telecommunications providers in Indiana as found in [170 IAC 7-2.1-1](#). The federal "Uniform System of Accounts" that is found in 47 CFR § 32 has classified the "central office equipment, station equipment or apparatus, station connection, wiring, or large private branch exchanges" into specific accounts. The "buried cable" accounts as found in 47 CFR § 32.2423 and 47 CFR § 32.6423 are one of the accounts for the "central office equipment, station equipment or apparatus, station connection, wiring, or large private branch exchanges."

Therefore, Taxpayer's protest of the imposition of use tax and the denial of refund of sales or use taxes paid on its purchase of the "cables, fibers, innerducts, ground wires, and equalization module presses" is sustained.

B. "Video and Internet Equipment."

Taxpayer protests the denial of its refund claim on the sales tax paid and use tax remitted on its purchases of equipment used to provide video and internet services—i.e., "set top boxes," "bridges," "routers," "personal video recorders," "link systems," "D links," and "video server."

Taxpayer maintains that the equipment qualifies for exemption under the "telecommunications equipment exemption" found in IC § 6-2.5-5-13.

The statute in question was recently amended and IC § 6-2.5-5-13 (effective July 1, 2009), now provides:

Transactions involving tangible personal property are exempt from the state gross retail tax, if:

(1) the property is:

(A) classified as central office equipment, station equipment or apparatus, station connection, wiring, or large private branch exchanges according to the uniform system of accounts which was adopted and prescribed for the utility by the Indiana utility regulatory commission;

(B) mobile telecommunications switching office equipment, radio or microwave transmitting or receiving equipment, including, without limitation, towers, antennae, and property that perform a function similar to the function performed by any of the property described in clause (A); or

(C) a part of a national, regional, or local headend or similar facility operated by a person furnishing video services, cable radio services, satellite television or radio services, or Internet access services; and

(2) the person acquiring the property:

(A) furnishes or sells intrastate telecommunication service in a retail transaction described in [IC 6-2.5-4-6](#); or

(B) uses the property to furnish:

(i) video services or Internet access services; or

(ii) VOIP services.

(Emphasis added.)

However, these statutory amendments expanding this exemption to property that is "a part of a national, regional, or local headend or similar facility operated by a person furnishing video services, cable radio services, satellite television or radio services, or Internet access services" are not yet in effect for the years in question. Id. Thus, the question of whether this equipment would qualify as "local headend facility" property will not be discussed.

Therefore, Taxpayer's protest of the imposition of use tax and the denial of refund of sales or use taxes paid on its purchase of "video and internet equipment" is denied.

FINDING

Taxpayer's protest is sustained in part and denied in part. Taxpayer's protest of the imposition of tax/denial of refund on its purchases of the "cables, fibers, innerducts, ground wires, and equalization module presses" is sustained, as discussed in subpart A. Taxpayer's protest of the imposition of tax/denial of refund for its purchases of "video and internet equipment" is denied, as discussed in subpart B.

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