

## DEPARTMENT OF STATE REVENUE

Revenue Ruling #2010-08 ST  
September 8, 2010

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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

**ISSUES****Sales Tax – Price Discounts**

A company ("Taxpayer") is seeking a ruling as to the amount subject to sales tax regarding a transaction involving a price discount. Additionally, Taxpayer requests guidance as to how, and under what circumstances, it may claim a refund from the Department for any taxes it may have remitted erroneously.

**Authority:** [IC 6-2.5-2-1](#); [IC 6-2.5-2-2](#); [IC 6-2.5-1-5](#); [IC 6-2.5-6-13](#); [IC 6-2.5-6-14.1](#); [IC 6-8.1-9](#)

**STATEMENT OF FACTS**

In support of its request for a revenue ruling, Taxpayer, in pertinent part, provides the following facts: [Taxpayer] purchases a direct mail advertising program from a [third-party vendor] and re-sells it as [Taxpayer's program] to [Taxpayer's independent dealerships] in Indiana that choose to participate in the program. The end products of this program are service reminders and service coupon mailers, direct mailed by the [third-party vendor] to customers and prospective customers of the participating [Taxpayer] dealers. In order to participate in the program, each dealer must complete [an enrollment form] and agree to [program terms] which are printed on the back of the enrollment form. [The third-party vendor] provides detail to support [its] billing to [Taxpayer] based on the type and volume of program activity for each of the [Taxpayer] dealers, and they also provide a data file for use by [Taxpayer] in creating the two-part billing by [Taxpayer] to [its dealers], as described below. The total amount of program fees billed to a customer represents the combined [billed costs] of the different parts of the program utilized for that [dealer] during the month (for example: service reminder mailers, coupon mailers, mailer customization setup costs). For purposes of this inquiry, this will also be referred to as the "list price." The arrangement, which applies to all [Taxpayer] dealers, is that the sales price will be discounted 50% from the "list price."

Each month, Taxpayer bills its participating dealers for monthly [program] fees. As part of its billing, Taxpayer simultaneously issues each participating dealer an invoice for the entire list price of the program fees and a corresponding discount coupon for 50% off the list price. Taxpayer is not reimbursed by a third party for the discount coupon. In fact, allowing for the discount coupon, Taxpayer pays more to the third-party vendor for the program than it receives in program fees from its vendors. Taxpayer has been subjecting the entire "list price" (and not the 50% discounted price) to sales tax.

**DISCUSSION**

Based on the foregoing facts, Taxpayer requests that the Department rule whether the entire "list price" or the 50% discounted price is subject to Indiana sales tax. Additionally, Taxpayer requests guidance as to how, and under what circumstances, it may claim a refund from the Department for any taxes it may have remitted erroneously.

In general, [IC 6-2.5-2-1](#) imposes sales tax on retail transactions made in Indiana. Pursuant to [IC 6-2.5-2-2](#), the sales tax due on a retail transaction is measured against the gross retail income received by the retail merchant in the transaction. However, [IC 6-2.5-1-5\(b\)](#) excludes from the definition of gross retail income that part of the gross receipts attributable to "discounts, including cash, terms, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale." To the extent that Taxpayer charged, collected, and remitted sales tax on the "list price" (i.e., 100% of the price invoiced to its dealers), it erred.

In accordance with [IC 6-2.5-6-13](#), a taxpayer may claim a refund from the Department in such a situation if:

- (1) a retail merchant erroneously or illegally collects state gross retail or use taxes under this article from the person;
- (2) the retail merchant remits the taxes to the department;
- (3) the retail merchant does not refund the taxes to the person; and
- (4) the person properly applies for the refund under the refund provisions contained in [IC 6-8.1-9](#).

The retail merchant, however, is not entitled to a refund of state gross retail or use taxes unless the retail merchant refunds those taxes to the person from whom they were collected. [IC 6-2.5-6-14.1](#).

Based on the foregoing, either Taxpayer or its dealers (but not both) may file a claim for refund with the Department. If Taxpayer's dealers file for a refund, they must be able to document that the requirements contained in [IC 6-2.5-6-13](#) have been met, while also meeting the procedural requirements found at [IC 6-8.1-9](#).

The requirements found at [IC 6-8.1-9](#) are discussed in detail in Commissioner's Directive #13, available online at: <http://www.in.gov/dor/reference/files/cd13.pdf>.

If Taxpayer files for a refund, it must, like any other taxpayer, be able to document that the requirements contained in [IC 6-2.5-6-13](#) have been met, while also meeting the procedural requirements found at [IC 6-8.1-1-9](#). But as the retail merchant for the transactions at issue, Taxpayer also must document that it has already refunded the requested amounts to its dealers. Regardless of who claims the refund, the Form GA-110L must be used. The Form GA-110L ("Claim for Refund") is available online at: <http://www.in.gov/dor/3504.htm>.

#### **RULING**

The gross retail income of a retail transaction does not include discounts or coupons that are allowed by a seller and taken by a purchaser when not reimbursed by a third party. Accordingly, the amounts discounted by Taxpayer to its dealers were not, and are not, subject to Indiana sales tax.

Either Taxpayer or its dealers (but not both) may file a claim for refund with the Department. However, if Taxpayer's dealers file for a refund, they must comply with the requirements of [IC 6-2.5-6-13](#) and [IC 6-8.1-9](#) (as discussed herein). If Taxpayer itself files for a refund, it must comply with the requirements of [IC 6-2.5-6-13](#), [IC 6-2.5-6-14.1](#), and [IC 6-8.1-9](#) (as discussed herein).

#### **CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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