

Letter of Findings: 10-0352
Gross Retail Tax
For 2006 through 2008

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ISSUE

I. Fuel Purchases – Gross Retail Tax.

Authority: IC § 6-2.5-7-3(a); IC § 6-2.5-7-3(b); IC § 6-8.1-5-1(c); Sales Tax Information Bulletin 15 (August 2009). Taxpayer argues that it paid sales tax when it purchased fuel for use in its delivery trucks.

STATEMENT OF FACTS

Taxpayer sells propane throughout the United States including Indiana. The Department of Revenue (Department) conducted an audit review of Taxpayer's business records. Because of the "nature and volume of the taxpayer's sales invoices," Taxpayer and the Department agreed to employ a Stratified Statistical Sample of their 2006, 2007, and 2008 sales accounts. The Department assessed additional tax based on a number of substantive issues. The Taxpayer disagreed with one portion of the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. This Letter of Findings results.

I. Fuel Purchases – Gross Retail Tax.

DISCUSSION

The audit found that Taxpayer had made purchases of fuel for its fleet of commercial vehicles. However, the audit also determined that Taxpayer had purchased fuel exempt from state sales tax. As noted in the audit report, "An employee of [Taxpayer] purchased fuel exempt from the Indiana sales tax and later reaffirmed the exempt purchase by providing a signed Special Sales and Use Tax Exemption Certificate (Form AD-70) to the Department."

IC § 6-2.5-7-3(a) (as amended April 1, 2008) requires as follows:

(a) With respect to the sale of gasoline which is dispensed from a metered pump, a retail merchant shall collect, for each unit of gasoline sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$0.001), of:

- (1) the price per unit before the addition of state and federal taxes; multiplied by
- (2) seven percent (7 [percent]).

In regard to the sale of diesel fuel – denominated as "special fuel" in the statute, IC § 6-2.5-7-3(b) (as amended April 1, 2008) requires:

With respect to the sale of special fuel or kerosene which is dispensed from a metered pump, unless the purchaser provides an exemption certificate in accordance with [IC 6-2.5-8-8](#), a retail merchant shall collect, for each unit of special fuel or kerosene sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$0.001), of:

- (1) the price per unit before the addition of state and federal taxes; multiplied by
- (2) seven percent (7 [percent]). See Sales Tax Information Bulletin 15 (August 2009) (2009 Ind. Reg. 045090753NRA).

However, the documentation supplied to the audit – the AD-70 – indicates that diesel and/or gasoline was purchased without paying sales tax. Nonetheless, Taxpayer argues that the documentation is incorrect and that it did not purchase fuel without paying the sales tax.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Taxpayer has provided sufficient evidence establishing that it paid sales tax on its routine purchases of fuel; nonetheless, the AD-70 establishes that sales tax was not paid at the "Fort Harrison Mini-Mart." The Department is prepared to sustain Taxpayer's protest except to the extent that it made purchases from the location designated in the AD-70.

FINDING

Except for purchases made at the "Fort Harrison Mini-Mart," Taxpayer's protest is sustained.

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