

**Letter of Findings: 10-0483
Sales and Use Tax
For 2007, 2008, and 2009**

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I. Sales and Use Tax – Unitary Transaction: Postage.

Authority: IC § 6-2.5-1-1; IC § 6-2.5-1-2; IC § 6-2.5-1-5; IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-4-1; IC § 6-8.1-5-1; [45 IAC 2.2-1-1](#); [45 IAC 2.2-3-4](#); [45 IAC 2.2-4-1](#); [45 IAC 2.2-4-2](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the imposition of sales and use tax on that portion of taxpayer's invoices purportedly attributable to postage charges.

STATEMENT OF FACTS

Taxpayer specializes in full service direct marketing. Taxpayer designs, prints, and mails marketing materials based upon specifications provided by taxpayer's customers. In some cases, the customer provides taxpayer the promotional materials, only contracting with taxpayer to process and mail the printed materials. Taxpayer contracts with customers residing both in Indiana and outside Indiana. The Department of Revenue (Department) conducted an audit of taxpayer's records for the 2007, 2008, and 2009 tax years (Tax Years) and assessed additional sales and use tax on the invoice totals. Taxpayer protested the additional assessments. The Department conducted an administrative hearing, and this Letter of Findings results. Further facts will be supplied as required.

I. Sales and Use Tax – Unitary Transaction: Postage.

DISCUSSION

Taxpayer protests the assessment of use tax on that portion of taxpayer's invoices purportedly attributable to the cost of postage. Taxpayer argues that, when it merely provides assembly and mailing services, taxpayer acts as a service provider. Therefore, taxpayer does not have to collect sales tax on any portion of its invoices attributable to those services. Taxpayer further argues that those services include the pass-through of the postage costs. The Department disagreed and assessed additional use tax on that portion of the taxpayer's invoices for which taxpayer had not collected nor remitted sales tax. The audit determined that the total shown on taxpayer's invoices represented a combined lump sum charge and assessed use tax on the untaxed portions of the unitary transactions.

All tax assessments are prima facie evidence that the Department's claim for the 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).

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. IC § 6-2.5-1-2(a) defines a "retail transaction" as:

[A] transaction of a retail merchant that constitutes selling at retail as described in [IC 6-2.5-4-1](#) that constitutes making a wholesale sale as described in [IC 6-2.5-4-2](#), or that is described in any other section of [IC 6-2.5-4](#).

IC § 6-2.5-4-1 provides:

(a) A person is a retail merchant making a retail transaction when he engages in selling at retail.

(b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:

(1) acquires tangible personal property for the purpose of resale; and

(2) transfers that property to another person for consideration.

(c) For purposes of determining what constitutes selling at retail, it does not matter whether:

(1) the property is transferred in the same form as when it was acquired;

(2) the property is transferred alone or in conjunction with other property or services; or

(3) the property is transferred conditionally or otherwise.

(d) Notwithstanding subsection (b), a person is not selling at retail if he is making a wholesale sale as described in section 2 of this chapter.

(e) The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:

(1) the price of the property transferred, without the rendition of any service; and

(2) except as provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records.

For purposes of this subsection, a transfer is considered to have occurred after delivery of the property to the purchaser.

Use tax is imposed under IC § 6-2.5-3-2(a), which states:

An 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, regardless of the location of that transaction or of the retail merchant making that transaction.

Also of relevance is [45 IAC 2.2-3-4](#), which states:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

[45 IAC 2.2-4-2](#)(a) instructs that services generally are exempt from sales and use tax.

However, the transfer of services is taxed if it is part of a retail "unitary transaction." IC § 6-2.5-1-2(b). Parties engage in a retail "unitary transaction" when one party furnishes items of personal property and services under a single order or agreement and calculates a total combined charge for those items and services. IC § 6-2.5-1-1(a). A unitary transaction occurs irrespective of the fact that the seller includes the cost of services, which would not otherwise be taxable, in the selling price. [45 IAC 2.2-1-1](#)(a). And the applicable provisions of IC § 6-2.5-4-1 operate on the transaction whether the property is transferred in the same form as when it was acquired, the property is transferred alone, or transferred in conjunction with other property or services. Pursuant to IC § 6-2.5-4-1(e), the amount of the retail transaction subject to sales tax includes "the price of the property transferred" and "any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records." See also [45 IAC 2.2-4-1](#)(b)(3)(providing that the amount of the retail transaction subject to tax includes the amounts collected for "services performed or work done on behalf of the seller prior to transfer of such property at retail.").

Taxpayer separated various printing and service charges on its invoices, with each portioned service carrying a separate charge. Taxpayer subtotaled those charges at the bottom of its invoices, designating the resulting total as the "sale amount." Taxpayer added shipping, postage, and sales tax to the sale amount to arrive at the total invoice amount. Taxpayer charged its customers sales tax on the materials printed by taxpayer for customers which did not provide exemption certificates. However, taxpayer only calculated sales tax on the printing charges. Taxpayer did not charge sales tax on separately stated service charges, nor charge sales tax on the postage or delivery charges.

The definition of "gross retail income" in IC § 6-2.5-1-5(a) includes "delivery charges" when those delivery charges are incurred in a retail transaction involving the transfer of tangible personal property. Under IC § 6-2.5-1-5, delivery charges are defined as "charges by the seller for preparation and delivery of the property to a location designated by the purchaser of property, including but not limited to transportation, shipping, postage, handling, crating, and packing." IC § 6-2.5-1-5 includes postage as a type of delivery charge.

To summarize, when the taxpayer contracted to print the materials to be mailed for the customer, the taxable amount of the retail unitary transaction included all charges for materials, services and postage. Taxpayer has not provided evidence sufficient to overcome the Department's assessment of Indiana use tax on the whole amount charged by taxpayer to its customers. That amount includes postage.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 02/23/2011 by Legislative Services Agency
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