

Letter of Findings Number: 04-20100495
Use Tax
For Tax Years 2007-09

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ISSUE

I. Use Tax—Public Transportation Exemption.

Authority: Carnahan Grain, Inc. v. Indiana Dep't of State Revenue, 828 N.E.2d 465 (Ind. Tax Ct. 2005); IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-5-27; IC § 6-8.1-5-1; [45 IAC 2.2-5-61](#).

Taxpayer protests the imposition of use tax on trucks it believes qualify for the public transportation exemption.

STATEMENT OF FACTS

Taxpayer is an Indiana business providing services to customers in a single industry. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had purchased items of tangible personal property during the audit period of 2007, 2008, and 2009, but had not paid sales tax on the purchase of those items. The Department therefore issued proposed assessments for use tax and interest for those years. Taxpayer protests the imposition of use tax on some of those items. Specifically, Taxpayer protests that some of its trucks were used in providing public transportation services and that the purchases of items associated with those trucks were therefore exempt from sales and use taxes. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Use Tax—Public Transportation Exemption.

DISCUSSION

Taxpayer protests the imposition of use tax on its purchases of items associated with several trucks which it believes qualify for the public transportation exemption. The Department based its determination on several documents which described Taxpayer's business with its customers. Taxpayer states that these documents only define certain aspects of its relationship with its customers. In the course of the protest process, Taxpayer provided other documentation which it believes gives a more comprehensive view of the business it conducts regarding the trucks. This new information, in Taxpayer's view, establishes that the trucks were used in providing public transportation and that the related parts and fuel purchases were therefore also exempt. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The sales tax is imposed under IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

A complimentary 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.

The public transportation exemption is found at IC § 6-2.5-5-27, which states:

Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

The exemption is further explained by [45 IAC 2.2-5-61](#), which states in part:

- (a) The state gross retail tax shall not apply to the sale and storage or use in this state of tangible personal property which is directly used in the rendering of public transportation of persons or property.
- (b) Definition: Public Transportation. Public transportation shall mean and include the movement, transportation, or carrying of persons and/or property for consideration by a common carrier, contract carrier, household goods carrier, carriers of exempt commodities, and other specialized carriers performing public transportation service for compensation by highway, rail, air, or water, which carriers operate under authority issued by, or are specifically exempt by statute or regulation from economic regulation of, the public service commission of Indiana, the Interstate Commerce Commission, the aeronautics commission of Indiana, the U.S. Civil Aeronautics Board, the U.S. Department of Transportation, or the Federal Maritime Commissioner; however, the fact that a company possesses a permit or authority issued by the P.S.C.I., I.C.C., etc., does not of itself mean that such a company is engaged in public transportation unless it is in fact engaged in the

transportation of persons or property for consideration as defined above.

(c) In order to qualify for exemption, the tangible personal property must be reasonably necessary to the rendering of public transportation. The tangible personal property must be indispensable and essential in directly transporting persons or property.

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(Emphasis added).

Also, the Indiana Tax Court has addressed the application of the public transportation exemption. In *Carnahan Grain, Inc. v. Indiana Dep't of State Revenue*, 828 N.E.2d 465, 468 (Ind. Tax Ct. 2005), the court provided:

[I]f the property is not predominately used for third-party transportation (i.e., it is predominantly used to transport the taxpayer's own property), then the taxpayer is not entitled to the exemption.

(Emphasis in original).

Therefore, the property in question must be used predominantly for transporting the property of another for consideration in order to qualify for the public transportation exemption.

When reviewed with the information contained in the audit report, the documentation which Taxpayer provided in the protest process establishes that the four trucks in question do qualify for the public transportation exemption. The parts and fuel which Taxpayer purchased during the audit period for use in the exempt trucks also qualify for the public transportation exemption, as provided by [45 IAC 2.2-5-61](#)(c). Taxpayer has met its burden under IC § 6-8.1-5-1(c) and a supplemental audit will recalculate Taxpayer's use tax for these periods after removal of the amounts associated with truck parts and fuel. Interest will be recalculated based on the recalculated amount of use tax.

FINDING

Taxpayer's protest is sustained.

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