

Letter of Findings Number: 04-20100713
Sales Tax
For Tax Years 2007, 2008, and 2009

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ISSUE

I. Sales Tax – Collection of Sales Tax and Tax-exempt Transactions.

Authority: IC § 6-8.1-5-1; IC § 6-2.5-2-1; IC § 6-2.5-6-1; IC § 6-2.5-9-3; IC § 6-2.5-8-8; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

The taxpayer protests the imposition and assessment of sales tax on retail transactions it asserts were exempt from the collection of sales tax.

STATEMENT OF FACTS

Taxpayer manufactures protective coverings primarily used in the automobile industry. The Department conducted an audit of taxpayer for tax years 2007, 2008, and 2009 ("Tax Years"). During the Tax Years, taxpayer made sales taxpayer asserts were exempt from the collection of sales tax from the respective purchasers. During the audit, taxpayer could not produce documents supporting the exempt sales asserted. As the result of the audit, the Indiana Department of Revenue ("Department") issued proposed assessments for sales tax. Taxpayer protests a portion of these assessments. An administrative hearing was held and this Letter of Findings results. Additional facts will be provided as necessary.

I. Sales Tax – Collection of Sales Tax and Tax-exempt Transactions.

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an 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).

IC § 6-2.5-2-1(a) imposes an excise tax, known as the state gross retail tax, on retail transactions made in Indiana. This tax is referred to commonly as "sales tax." IC § 6-2.5-2-1(b) states that the person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided by law, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant is required to collect the tax as agent for the state. IC § 6-2.5-2-1(b).

Taxpayer is a registered retail merchant with the State of Indiana and holds a retail merchant's certificate. IC § 6-2.5-6-1 states the method and timetable by which a retail merchant is obligated to remit the collected sales tax to the State of Indiana through the Department of Revenue. IC § 6-2.5-9-3 imposes a duty on a retail merchant to hold those taxes in trust for the State and remit those collected taxes to the Department.

The tax statutes have provisions exempting specific transactions and/or specific purchasers from taxation. IC § 6-2.5-8-8 states that qualified persons and organizations may present a retail merchant with an exemption certificate instead of paying the sales tax. A retail merchant who receives a "proper exemption certificate" has no duty to collect or remit sales tax on that transaction. Id. The Department prescribes both the proper forms and the use of those forms in order for a purchaser to enjoy such an exemption.

Taxpayer asserts that it made sales to purchasers who presented exemption certificates. After reviewing the taxpayer's sales invoices, the auditor requested copies of documents supporting taxpayer's assertions. The Department has issued a variety of prescribed forms (certificates) that qualified exempt purchasers can present to a retail merchant. Only a sales tax exemption certificate documents to a retail merchant that the transaction is exempt from the sales tax and relieves the retail merchant from the statutory obligation to collect sales tax from the purchaser.

During the hearing, taxpayer presented copies of sales tax exemption certificates corresponding to a select number of taxpayer's sales. The Department finds some of these documents meet the burden for substantiating exemption from the imposition and collection of sales tax under the applicable statutes. Other documents do not adequately substantiate exemption from the imposition and collection of sales tax. Having reviewed the documents in aggregate, the Department finds that taxpayer has demonstrated that some of taxpayer's sales of tangible personal property during the Tax Years enjoy an exemption from the collection of sales tax.

FINDING

Taxpayer's protest is sustained in part and denied in part, subject to review in a supplemental audit.

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