

Supplemental Letter of Findings: 04-20100519
Gross Retail Tax
For the Years 2007 and 2008

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ISSUE

I. Capital Expenditures – Gross Retail Tax.

Authority: IC § 6-2.5-2-1(a); IC § 6-2.5-3-2(a); IC § 6-2.5-4-1; IC § 6-8.1-5-1(c).

Based on the supplemental information provided since the original hearing, Taxpayer argues that it was not required to pay sales/use tax on three purchases.

STATEMENT OF FACTS

Taxpayer provides prescription medicine and medical supplies to nursing homes and to the residents of those homes. Taxpayer also sells certain other supplies to the nursing homes for use by those homes. The Department of Revenue (Department) conducted an audit review of Taxpayer's business records. The audit found that taxpayer "consistently reported zero taxable sales and zero sales tax liability." The audit assessed Taxpayer sales/use tax. Taxpayer disagreed with portions of that assessment. An administrative hearing was conducted during which Taxpayer discussed the basis for its various protests. A Letter of Findings was issued in which "The Audit Division [was] requested to review transactions with entities which provided an exemption certificate...." Following the issuance of the Letter of Findings, Taxpayer asked for a supplemental review of additional documentation which had become available. The request was granted, and this Supplemental Letter of Findings results.

I. Capital Expenditures – Gross Retail Tax.

DISCUSSION

Taxpayer argues that the audit incorrectly assessed use tax on purchases from the Indiana Telephone Co., from a Lexus car dealership, and from an Illinois company called AutoMed. Taxpayer has provided documentation purportedly establishing that sales tax was paid at the time the original transactions occurred.

IC § 6-2.5-2-1(a) imposes "[a]n excise tax, known as the state gross retail tax... on transactions made in Indiana." unless a valid exemption is applicable. Retail transactions involve the transfer of tangible personal property. IC § 6-2.5-4-1. A complementary 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. IC § 6-2.5-3-2(a).

The Department's audit assessed Taxpayer "use tax" on items which Taxpayer purchased during the years under audit. However, Taxpayer argues that the sales tax was paid at the time of the original transactions.

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."

In the case of the purchases from Indiana Telephone Co. and from the Lexus car dealership, Taxpayer has provided sufficient information establishing that Taxpayer paid sales tax at the time of the original transactions. The original audit should be adjusted to reflect that fact. In the case of the transaction with AutoMed, the documentation submitted does not establish that Indiana sales tax was charged at the time of the transaction. The AutoMed invoice indicates that "Tax" was charged but there is nothing which establishes that the tax was paid to Indiana.

FINDING

Taxpayer's protest is denied in part and sustained in part.

SUMMARY

The audit assessment should be adjusted to reflect the fact that Taxpayer submitted information establishing that it paid sales tax on the transactions with the Indiana Telephone Co. and with the Lexus car dealership.

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