

**Letter of Findings: 04-20110043**  
**Gross Retail Tax**  
**For the Years 2006, 2007, and 2008**

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**ISSUE**

**I. Equipment Sales – Gross Retail Tax.**

**Authority:** IC § 6-2.5-2-1(a); IC § 6-2.5-2-1(b); IC § 6-2.5-3-1(a); IC § 6-2.5-3-1(c); IC § 6-2.5-3-2(a); IC § 6-8.1-5-1(c); Rhoades v. Ind. Dep't of State Revenue, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); Sales Tax Information Bulletin 37 (June 2007).

Taxpayer argues that it was not required to collect sales tax when it sold equipment to Indiana customers.

**STATEMENT OF FACTS**

Taxpayer is a company in the business of selling heavy equipment. Although Taxpayer is headquartered in Kentucky, it also operates business locations in Indiana. The equipment Taxpayer sells is used for lawn and gardening, construction, forestry, and agriculture. The Department of Revenue conducted a sales and use tax for the years 2006 through 2008. The audit resulted in the assessment of additional sales/use tax. Taxpayer protested, and an administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for its protest. This Letter of Findings results.

**I. Equipment Sales – Gross Retail Tax.**

**DISCUSSION**

The audit found that Taxpayer should have collected Indiana sales tax on equipment it sold to Indiana customers. The audit report explains the rationale as follows:

When reviewing the invoices, audit had to rely on the documentation provided. The documentation was generally in the form of a sales invoice. If the sales invoice indicated that the equipment or part was shipped to an Indiana location, audit has assessed tax on the sale. If Kentucky tax was collected in error on these sales, taxpayer should research any remedies it may have with Kentucky.... Audit is assessing tax on these sales where the invoice indicates delivery to an Indiana location.

Taxpayer reviewed the same invoices as the audit but disagreed with the audit's conclusions. Taxpayer explains as follows:

Audit is claiming that the "Ship To" address of the invoice is proof that the machinery was delivered to Indiana. [Taxpayer] explained to the audit that this shipping address is pre-populated by our computer system, and that the shipping address defaults to the customers' address unless over-ridden. [Taxpayer] does not deliver machinery and most, if not all of these customers, own trucks/trailers capable of hauling this type of equipment. [Taxpayer's] invoices do not indicate a charge for delivery, which would be shown as a separate line item on our invoices.

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). The person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). Indiana also imposes a complimentary excise tax called "the use tax" 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." IC § 6-2.5-3-2(a). Use means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The use tax is functionally equivalent to the sales tax. See Rhoades v. Ind. Dep't of State Revenue, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

Because Taxpayer operates facilities both inside and outside the state, the issue raised by the audit is governed by IC § 6-2.5-3-1(c) as follows:

"A retail merchant engaged in business in Indiana" includes any retail merchant who makes retail transaction in which a person acquires personal property or services for use, storage, or consumption in Indiana and who... maintains an office, place of distribution, sales location, sample location, warehouse, storage place, or other places of business which is located in Indiana....

Sales Tax Information Bulletin 37 (June 2007), 20070620 Ind. Reg. 045070337NRA, explains as follows:

An out-of-state vendor is engaged in business in Indiana and must be registered as an Indiana Retail Merchant and charge Indiana Use Tax on tangible personal property delivered into Indiana if the out-of-state vendor:

- a. maintains an administrative office in Indiana;
- b. maintains a research facility in Indiana;
- c. displays merchandise at local trade fairs and exhibitions in Indiana;

- d. maintains a factory or warehouse in Indiana; or
- e. delivers goods into Indiana by the seller's truck where title and possession transfer in Indiana. (Emphasis added).

The rule is clear; if Taxpayer delivers equipment to customers located in Indiana, it is responsible for collecting sales/use tax.

Taxpayer objects to the assessment on the ground that it did not deliver the equipment. Taxpayer explains that the "ship to address" on the invoice is incorrect and that this "shipping address is pre-populated by [Taxpayer's] computer system, and that the shipping address "defaults to the customers[]" address unless over-ridden."

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 explained its business practices and the nature of the transactions it enters into with its Indiana customers. In addition, Taxpayer has supplied source documentation establishing that it assesses, collects, and forwards to the collecting authority Kentucky sales tax. To the extent that Taxpayer can similarly demonstrate that it assessed and collected Kentucky sales tax on the subject transactions, Taxpayer's protest is sustained.

It should be noted, that the issue raised by the audit would seem easily addressed; on a "going forward" basis, Taxpayer should correct its computer-generated invoices so that the invoices correctly document the taxable nature of the transaction it enters into with its Indiana customers.

#### **FINDING**

To the extent that Taxpayer has supplied documentation establishing that it assessed and collected Kentucky sales tax on the transactions at issue, Taxpayer's protest is sustained.

*Posted: 06/29/2011 by Legislative Services Agency*

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