

**Supplemental Letter of Findings: 04-20100218**  
**Sales and Use Tax**  
**For the Years 2007 and 2008**

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**ISSUE**

**I. Sales Tax – Imposition – Diesel Fuel Sales.**

**Authority:** IC § 6-2.5-7-3; [45 IAC 2.2-8-8](#); [45 IAC 2.2-8-12](#); P.L. 211-2007, Sec. 54; Letter of Findings 04-20100218.

Taxpayer protests the imposition of sales tax on the sale of special fuel which Taxpayer claims it sold subject to an exemption.

**STATEMENT OF FACTS**

Taxpayer operates a full service travel center in Indiana. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had not collected and remitted the proper amount of sales tax on sales of diesel fuel during the tax years 2007 and 2008. Also, the Department determined that Taxpayer slightly overstated its prepaid sales tax on purchase of fuel from its supplier. The Department therefore issued proposed assessments for sales tax, use tax, negligence penalty, and interest for those years. Taxpayer protested the proposed assessments relating to the sale of diesel fuel on the grounds that some of the diesel sales were to exempt customers. A hearing was held and Letter of Findings 04-20100218 ("LOF") was issued denying Taxpayer's protest of the diesel fuel sales, but sustaining Taxpayer's protest of the negligence penalty.

Taxpayer timely requested rehearing on its protest of the assessment of sales tax on diesel fuel sales it claims are exempt. In its request for rehearing Taxpayer pointed to temporary law that was in effect during the years at issue and which had not been addressed in the LOF. Taxpayer's request for rehearing was granted to address this new argument. Additional facts will be provided as necessary.

**I. Sales Tax – Imposition – Diesel Fuel Sales.**

**DISCUSSION**

The Department determined, under IC § 6-2.5-7-3(b), that Taxpayer, in the absence of relevant exemption certificates, had not collected and remitted the proper amount of sales tax on sales of diesel fuel during the tax years 2007 and 2008. Due to the volume of sales over the course of the two years at issue, the Department used a sample period, December 2008, to determine the percentage of taxable and exempt sales. It should be noted that the Department's audit excluded from the sample period those transactions where the purchaser was clearly a for-hire trucking company even though Taxpayer did not have exemption certificates on hand. The Department then applied the taxable percentage from the sample period to all sales for the whole audit period. This resulted in assessments for additional sales tax which the Department determined Taxpayer should have collected and remitted over the two years.

Taxpayer protests that some of the sales included as taxable in the sample period were actually exempt and that, when these sales are moved from "taxable" to "exempt" status in the taxable sales calculations, the overall taxable percentage will be reduced as will the Department's assessments.

This Supplemental Letter of Findings incorporates by reference the statement of the facts and law in Letter of Findings 04-20100218 and will not repeat them here. The LOF concluded that IC § 6-2.5-7-3(b) specifically requires retail merchants who sell special fuel from metered pumps - i.e., Taxpayer and other retailers like Taxpayer - to collect exemption certificates from their customers when they make exempt sales. Otherwise, in the absence of exemption certificates, the sales are deemed taxable. Furthermore, in the absence of valid exemption certificates, [45 IAC 2.2-8-8\(d\)](#) makes it clear that Taxpayer bears the burden of proving that sales tax was remitted to the State or that Taxpayer's customers did indeed use the diesel fuel for exempt purpose.

After the original hearing Taxpayer offered sample documentation that consisted of individual records of fill-ups. Taxpayer pointed to the fact that DOT and ICC (now FMCSA) numbers were on these records and that "comdata" cards were used for these transactions. Taxpayer stated that this data indicates that the transaction was for exempt use. Upon further research with Comdata, the Department learned that the "comdata" cards are not issued solely to "for hire" - i.e., exempt - users. Furthermore, Taxpayer did not provide further explanation of the DOT and ICC (now FMCSA) numbers such that they clearly designate exempt status. The LOF concluded that Taxpayer had not met its burden to show that the subject purchases of diesel fuel were exempt from sales tax.

In its request for rehearing Taxpayer pointed to the fact that the General Assembly in 2007 amended the law (P. L. 211-2007, Sec. 54) to provide that retail merchants were not required to collect exemption certificates if the retailer collected the information from Form ST-135 for the transaction. Taxpayer argues that this provision was

effective retroactively to January 1, 2007 and expired on December 1, 2008, thus applying to the years at issue. Taxpayer states that it maintained receipts with ST-135 information in separate files.

P. L. 211-2007, Sec. 54 states:

[EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]

(a) As used in this SECTION, "department" refers to the department of state revenue.

(b) A retail merchant that sold tangible personal property to a person that used or consumed the tangible personal property in providing public transportation under [IC 6-2.5-5-27](#) may verify that the sale was exempt from taxation under [IC 6-2.5](#) by using the information contained in form ST-135 for the transaction.

(c) if a retail merchant provides the department with the information from form ST-135 to verify that a sale described in subsection (b) is exempt from taxation under [IC 6-2.5](#), the retail merchant may request:

- (1) a refund of gross retail tax plus any penalties and interest paid to the department; or
- (2) that the department satisfy any outstanding gross retail tax liabilities, including any penalties and interest for tax liabilities;

for the tangible personal property used or consumed in providing public transportation.

(d) this SECTION expires December 31, 2008.

Going forward, Taxpayer is still required to retain the ST-135 exemption certificates when it sells diesel fuel exempt from sales tax. The ST-135 form itself allows for the statement of blanket exemption within stated date ranges, thus alleviating Taxpayer of the burden of collecting the form for each repeat customer. (Please refer to Letter of Findings 04-20100218).

However, pursuant to the grant of rehearing on the temporary law referenced above, Taxpayer has provided documentation demonstrating that it retained information from forms ST-135 for the years at issue. This documentation is sufficient to sustain Taxpayer's burden to show that the contested transactions are exempt for the years at issue.

#### **FINDING**

Taxpayer's protest is now sustained.

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