

Letter of Findings: 04-20100556
Sales Tax
For the Year 2009

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ISSUE

I. Sales Tax – Imposition.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-4-10; IC § 6-2.5-3-5; IC § 6-8.1-5-1; [45 IAC 2.2-2-1](#); [45 IAC 2.2-4-6](#); [45 IAC 2.2-4-27](#); [45 IAC 2.2-3-26](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the imposition of sales tax on some rental items.

STATEMENT OF FACTS

Taxpayer is an out-of-state company that rents portable storage buildings to customers in multiple states, including Indiana. Pursuant to an investigation, the Indiana Department of Revenue ("Department") assessed Taxpayer sales tax on rentals made to Indiana residents in 2009. Taxpayer protested the assessment. A hearing was held on the protest. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales Tax – Imposition.

DISCUSSION

All tax assessments are prima facie evidence that the Department's claim for the tax is valid; the taxpayer bears the burden of proving that any 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).

"An excise tax, known as the state gross income tax, is imposed on retail transactions made in Indiana." IC § 6-2.5-2-1(a). A "retail transaction" is defined in IC § 6-2.5-1-2 as "a transaction of a retail merchant that constitutes selling at retail." "A person... is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person." IC § 6-2.5-4-10(a). In general, the gross receipts from renting or leasing tangible personal property are taxable. [45 IAC 2.2-4-27](#). This regulation only exempts from tax those transactions which would have been exempt in an equivalent sales transaction. Id.

IC § 6-2.5-2-1 provides:

- (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.

IC § 6-2.5-4-10 states in relevant part:

- (a) A person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person other than for subrent or sublease.
- (b) A person is a retail merchant making a retail transaction when the person sells any tangible personal property which has been rented or leased in the regular course of the person's rental or leasing business.

[45 IAC 2.2-4-27](#) states in relevant part:

- (a) In general, the gross receipts from renting or leasing tangible personal property are taxable. This regulation [\[45 IAC 2.2\]](#) only exempts from tax those transactions which would have been exempt in an equivalent sales transaction.
- (b) Every person engaged in the business of the rental or leasing of tangible personal property, other than a public utility, shall be deemed to be a retail merchant in respect thereto and such rental or leasing transaction shall constitute a retail transaction subject to the state gross retail tax on the amount of the actual receipts from such rental or leasing.
- (c) In general, the gross receipts from renting or leasing tangible personal property are subject to tax. The rental or leasing of tangible personal property constitutes a retail transaction, and every lessor is a retail merchant with respect to such transactions. The lessor must collect and remit the gross retail tax or use tax on the amount of actual receipts as agent for the state of Indiana. The tax is borne by the lessee, except when the lessee is otherwise exempt from taxation.
- (d) The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

- (1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump

sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

(2) Rental or lease period. For purposes of the imposition of the gross retail tax or use tax on rental or leasing transactions, each period for which a rental is payable shall be considered a complete transaction. In the case of a weekly rate, each week shall be considered a complete transaction. In the case of a continuing lease or contract, with or without a definite expiration date, where rental payments are to be made monthly or on some other periodic basis, each payment period shall be considered a completed transaction.

(Emphasis added).

At the hearing, Taxpayer described its business as follows: the unrelated manufacturer of the portable storage buildings sells these buildings to purchasers around the country. When a purchaser does not pay the full price of the building, the building is sold as "rent to own." Taxpayer finances the "rent to own" transaction and then, on a monthly basis, purchases all the portable storage buildings subject to these contracts from the unrelated manufacturer. Taxpayer becomes the owner of these buildings and collects all rental payments until the customer pays the full price.

Taxpayer disputes that it is a retail merchant subject to sales and use tax in Indiana because, according to Taxpayer, the retail transactions take place outside of Indiana. It is unclear from the documentation Taxpayer presented where the initial transaction takes place. However, irrespective of where the initial transaction takes place, the fact remains that Taxpayer rents some of these buildings to Indiana customers. Even if the initial lease transaction takes place outside of Indiana, once the property is located in Indiana and is subject to monthly rental payments – as described by Taxpayer at hearing and as evidenced by the sample lease presented by Taxpayer – billed to Indiana addresses for tangible personal property located in Indiana, Taxpayer is a retail merchant engaged in retail transactions in Indiana.

[45 IAC 2.2-4-27\(d\)\(2\)](#) clearly states that each billing period of a rental represents the period for a complete transaction. Therefore, the subsequent billings to Taxpayer's customers in Indiana are indeed separate, consecutive transactions that take place in Indiana and are therefore subject to Indiana sales tax.

Taxpayer further argues that if it is deemed to be a retail merchant selling at retail in Indiana, it should be entitled to "a credit on the cost basis of the storage buildings pursuant to [45 IAC 2.2-3-26](#) and [IC 6-2.5-3-5](#) ["]Credits for taxes paid to other states["] because the Illinois Department of Revenue has determined that [Taxpayer]'s initial purchase of the storage buildings from the Illinois manufacturer is the taxable transaction and that since [Taxpayer] and the manufacturer are both located in Illinois, the sales tax is payable to the State of Illinois." Taxpayer is mistaken. The sales and use taxes in Indiana are transaction taxes. The purchase of the storage buildings and the lease of the storage buildings are separate transactions. Had the transaction for the purchase of the storage buildings taken place in Indiana, then Taxpayer would have qualified for the "sale for resale" exemption from Indiana sales and use tax. However, as Taxpayer states, the purchases of the buildings take place in Illinois.

Taxpayer lastly argues that "the State of Indiana had to specifically make the leasing and/or renting of tangible personal property by water softening and conditioning businesses subject to Indiana's Sales Taxes pursuant to [45 IAC 2.2-4-6](#) and [IC 6-2.5-4-3](#) because, apparently, prior to [45 IAC 2.2-4-6](#) and [IC 6-2.5-4-3](#) the leasing and/or renting of tangible personal property by water softening and conditioning businesses was not subject to Indiana Sales Tax." First, Taxpayer does not demonstrate how the rental of the tangible personal property it owns is similar to the tangible personal property implicated by the statute and regulation it refers to. Second, IC § 6-2.5-4-10 plainly subjects the lease and rental of tangible personal property in Indiana to Indiana sales and use tax.

Therefore, for Indiana purposes, Taxpayer is obligated to collect sales tax on its rental of tangible personal property in Indiana.

FINDING

Taxpayer's protest is respectfully denied.

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