

**Letter of Findings Number: 04-20110082**  
**Sales/Use Tax**  
**For Tax Years 2007 - 2009**

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**ISSUE**

**I. Sales/Use Tax–Subscription and Catalog Purchases.**

**Authority:** IC § 6-8.1-5-1(c); IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-5-17.

Taxpayer protests the imposition of tax on a newspaper subscription and Taxpayer also protests that it already paid tax on purchases made from a catalog.

**II. Tax Administration–Interest.**

**Authority:** IC § 6-8.1-10-1(e).

Taxpayer protests the imposition of interest.

**STATEMENT OF FACTS**

Taxpayer is an excavating and demolition contractor. Taxpayer was audited by the Indiana Department of Revenue ("Department"). After the audit, Taxpayer filed a protest. An administrative hearing was held, resulting in this Letter of Finding. Further facts will be supplied as required below.

**I. Sales/Use Tax– Subscription and Catalog Purchases.**

**DISCUSSION**

At the outset, the Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

Sales tax in Indiana is imposed by IC § 6-2.5-2-1, which states:

(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.

Also, 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, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a).

With that in mind, we can now turn to Taxpayer's arguments. For two catalog items that were protested, Taxpayer argues that it paid sales tax at the time of the purchases. Taxpayer provided documentation showing that sales tax was paid at the time of purchase. Next, Taxpayer protests that its subscription to a weekly newspaper is exempt from tax. IC § 6-2.5-5-17 states, "Sales of newspapers are exempt from the state gross retail tax." Taxpayer's protests regarding the two catalog items and the newspaper subscription are sustained.

**FINDING**

Taxpayer's protests regarding the two catalog purchases and the newspaper subscription are sustained.

**II. Tax Administration–Interest.**

Taxpayer states that it "disagree[s] with the Department of Revenue charging us [Taxpayer] interest on the sales tax due" for its telephone provider. Taxpayer agrees that it owes the sales tax, but nonetheless Taxpayer argues that the Department should not impose interest.

Regarding interest, IC § 6-8.1-10-1(e) states: "Except as provided by [IC 6-8.1-3-17\(c\)](#) and [IC 6-8.1-5-2](#), the department may not waive the interest imposed under this section." The exceptions in the first part of IC § 6-8.1-10-1(e) are not applicable to Taxpayer. Thus the Department is unable to waive the interest. Taxpayer's protest is denied.

**FINDING**

Taxpayer's protest is respectfully denied.

**SUMMARY**

Taxpayer's protests regarding the two catalog purchases and the newspaper subscription are sustained. Taxpayer's protest of the imposition of interest is respectfully denied.

*Posted: 09/28/2011 by Legislative Services Agency*

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