

**Letter of Findings Number: 04-20110153**  
**Use Tax**  
**For the Year 2008**

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**ISSUE**

**I. Use Tax—Packaging Materials.**

**Authority:** IC § 6-2.5-5-6; IC § 6-2.5-5-9; [45 IAC 2.2-5-16](#).

Taxpayer protests the Department's assessment of use tax on lumber used to construct pallets.

**STATEMENT OF FACTS**

Taxpayer is a corporation that sells portable toilets. The Indiana Department of Revenue ("Department") audited Taxpayer and determined that Taxpayer did not self-assess use tax on various items.

One of the items on which the Department assessed use tax was lumber purchased by Taxpayer. Taxpayer used the lumber to build pallets. After construction of the pallets, Taxpayer placed its products on the pallets and then shipped the products to Taxpayer's customers. The customers did not return the pallets to Taxpayer.

Taxpayer protested the use tax imposed on the purchase price of the lumber. The Department conducted an administrative hearing and this Letter of Findings results. Additional facts will be supplied as necessary.

**I. Use Tax—Packaging Materials.**

**DISCUSSION**

Taxpayer protests the assessment of use tax on lumber used to construct pallets on which Taxpayer's products are shipped to customers.

[IC 6-2.5-5-9\(d\)](#) states, "Sales of wrapping material and empty containers are exempt from the state gross retail tax if the person acquiring the material or containers acquires them for use as nonreturnable packages for selling the contents that he adds."

In addition, [45 IAC 2.2-5-16](#) provides:

(a) The state gross retail tax shall not apply to sales of nonreturnable wrapping materials and empty containers to be used by the purchaser as enclosures or containers for selling contents to be added, and returnable containers containing contents sold in a sale constituting selling at retail and returnable containers sold empty for refilling.

(b) In general the gross proceeds from the sale of tangible personal property in a transaction of a retail merchant constituting selling at retail are taxable. This regulation [\[45 IAC 2.2\]](#) provided an exemption for wrapping materials and containers.

(c) General rule. The receipt from a sale by a retail merchant of the following types of tangible personal property are exempt from state gross retail tax:

(1) Nonreturnable containers and wrapping materials including steel strap and shipping pallets to be used by the purchaser as enclosures for selling tangible personal property.

(2) Deposits for returnable containers received as an incident to a transaction of a retail merchant constituting selling at retail.

(3) Returnable containers sold empty for refilling.

(d) Application of general rule.

(1) Nonreturnable wrapping material and empty containers. To qualify for this exemption, nonreturnable wrapping materials and empty containers must be used by the purchaser in the following way:

(A) The purchaser must add contents to the containers purchased; and

(B) The purchaser must sell the contents added.

(2) Returnable containers sold at retail with contents. To qualify for this exemption, the returnable containers must be:

(A) Sold in a taxable transaction of a retail merchant constituting selling at retail; and

(B) Billed as a separate charge by the retail merchant to his customer. If there is a separate charge for such containers, the sale of the container is exempt from tax under this regulation [\[45 IAC 2.2\]](#).

(3) Returnable containers sold empty. To qualify for this exemption the returnable container must be resold with the purpose of refilling. The sale of returnable containers to the original

However, the statute and regulation pertain to the sale of packages, not the sale of materials to construct the package. Thus, because Taxpayer purchased the materials to construct their pallets—as opposed to the pallets themselves—Taxpayer does not qualify for the exemption provided under IC § 6-2.5-5-9 and [45 IAC 2.2-5-16](#).

Taxpayer further does not qualify for exemption under IC § 6-2.5-5-6. IC § 6-2.5-5-6 permits an exemption for materials assembled into other tangible personal property when the other tangible personal property is sold by the

assembler. However, Taxpayer does not sell the pallets; instead, it uses the pallets as packaging for the portable toilets sold by Taxpayer. Thus, Taxpayer's purchase of lumber for assembly into pallets does not qualify for sales and use tax exemption as packaging or any other exemption provision.

**FINDING**

Taxpayer's protest is respectfully denied.

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