

Letter of Findings: 04-20110242
Sales and Use Tax
For the Tax Years 2008-2009

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ISSUES

I. Use Tax—Imposition.

Authority: IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-3-7; IC § 6-8.1-5-1; [45 IAC 2.2-3-4](#); 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 use tax on certain of its purchases.

II. Sales Tax—Imposition.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-4-1; IC § 6-2.5-9-3; IC § 6-8.1-5-1; 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 certain items.

STATEMENT OF FACTS

Taxpayer is a retail merchant. The Department of Revenue ("Department") conducted an audit review of Taxpayer's business records. As a result of the audit, the Department determined that Taxpayer owed additional use tax for the 2008 and 2009 tax years. The Department also determined that Taxpayer made a number of sales to Indiana customers without collecting sales tax or obtaining the necessary exemption certificates, and assessed sales tax for the 2008 and 2009 tax years. Taxpayer protested certain of the items on which use tax was assessed and the sales tax assessed. An administrative hearing was held, and this Letter of Findings results.

I. Use Tax—Imposition.

DISCUSSION

The Department notes that all tax assessments are presumed to be accurate and 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).

Indiana imposes "an excise tax, known as the use tax," on tangible personal property that is acquired in retail transactions and is stored, used, or consumed in Indiana. IC § 6-2.5-3-2(a). An exemption from the use tax is granted for transactions when sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4. Thus, "Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana gross retail tax has been collected at the point of purchase." [45 IAC 2.2-3-4](#). In determining whether tangible personal property is subject to use tax, IC § 6-2.5-3-7(a) provides that "[a] person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana, unless the person or the retail merchant can produce evidence to rebut that presumption."

The Department determined that Taxpayer had made purchases without either paying sales tax at the time of purchase or remitting use tax to the Department, and assessed use tax on the purchases. Taxpayer maintains that certain of its purchases are not subject to use tax. Taxpayer asserts that use tax was incorrectly imposed on items for which Taxpayer paid sales tax and on its purchase of "website design services."

A. Sales Tax Paid on Invoice.

During the audit, Taxpayer was unable to provide some of the invoices for its purchases and other use tax accrual information. The auditor was, therefore, unable to verify that Taxpayer paid sales tax at the time of the sales transaction and assessed use tax on the purchases.

Taxpayer maintains that use tax is being imposed on items for which it has previously paid sales tax. During the protest, Taxpayer submitted a number of invoices to demonstrate that sales tax was paid on certain of the purchases. Taxpayer's documentation demonstrated that sales tax was paid on several of the invoices provided.

Accordingly, Taxpayer's protest is sustained, to the extent that Taxpayer has provided an invoice demonstrating that sales tax was paid on the item(s). However, Taxpayer's protest is denied, to the extent that it was unable to provide an invoice demonstrating that sales tax was paid on the item(s). The audit division is requested to review the submitted invoices and to make whatever adjustments it deems appropriate.

B. "Website Design Services."

During the audit, Taxpayer was unable to provide some of the invoices for its purchases. The auditor was, therefore, unable to verify that the purchases were not subject to Indiana use tax.

Taxpayer asserts that its purchase of "website design services" is not subject to use tax. Taxpayer maintains that it has not purchased tangible personal property but, instead, purchased services that are not subject to use tax. During the protest, Taxpayer submitted an invoice from the vendor and information from the vendor's website

to demonstrate the nature of the transaction in question. Taxpayer's documentation demonstrated that the transaction was for services only and did not include the transfer of tangible personal property.

Accordingly, Taxpayer's protest to the imposition of use tax on "website design services" is sustained.

FINDING

Taxpayer's protest to the imposition of use tax on "items where sales tax was paid" is denied in part and sustained in part subject to the results of a supplemental audit, as discussed in subpart A. Taxpayer's protest to the imposition of use tax on "website design services" is sustained, as discussed in subpart B.

II. Sales Tax—Imposition.

DISCUSSION

The Department notes that all tax assessments are presumed to be accurate and 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).

Pursuant to IC § 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. IC § 6-2.5-1-2 defines a retail transaction as "a transaction of a retail merchant that constitutes selling at retail as described in IC § 6-2.5-4-1... or that is described in any other section of IC § 6-2.5-4." IC § 6-2.5-4-1(a) provides that "[a] person is a retail merchant making a retail transaction when he engages in selling at retail." IC § 6-2.5-4-1(b) further explains that a person sells at retail when he "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration."

IC § 6-2.5-9-3(2) sets out the responsibilities of a retail merchant:

An individual who: (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and (2) has a duty to remit state gross retail or use taxes (as described in [IC 6-2.5-3-2](#)) to the department; holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The Department found that Taxpayer, as a retail merchant, had made a number of sales to Indiana customers without collecting sales tax or obtaining the necessary exemption certificates, and assessed sales tax on the sales transactions.

Taxpayer maintains that sales tax should not be assessed on these transactions. Taxpayer asserts that tax should not be imposed because the items were purchased and incorporated into sprayers that were sold. During the protest, Taxpayer provided three purchase invoices and a copy of its "spec" sheets detailing what products are available for sale.

It appears that Taxpayer mistakenly believes that use tax was imposed on Taxpayer's purchase of these items. However, the Department assessed sales tax on Taxpayer's sales of these items to purchasers where Taxpayer failed to collect sales tax and failed to obtain an exemption certificate. Therefore, Taxpayer's documentation on its purchase of these items is not relevant to the issue of whether its sale of these items without collecting sales tax or obtaining the necessary exemption certificates results in the imposition of sales tax on the sales.

FINDING

Taxpayer protest to the imposition of sales tax on the sales transactions is denied.

SUMMARY

Taxpayer's protest to the imposition of use tax on "items where sales tax was paid" is denied in part and sustained in part subject to the results of a supplemental audit, as discussed in Issue I subpart A. Taxpayer's protest to the imposition of use tax on "website design services" is sustained, as discussed in Issue I subpart B. Taxpayer's protest to the imposition of sales tax is denied, as discussed in Issue II.

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