

Letter of Findings: 04-20110314
Sales and Use Tax
For the Years 2002 through 2008

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ISSUE

I. Sales and Use Tax – Imposition.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-4-1; IC § 6-8.1-5-1; IC § 6-8.1-5-4; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Rhoades v. Indiana Dep't of State Revenue, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); USAir, Inc. v. Indiana Dep't of State Revenue, 623 N.E.2d 466 (Ind. Tax Ct. 1993).

Taxpayer protests the assessment on purchases of tangible personal property.

STATEMENT OF FACTS

Taxpayer is an Indiana Limited Liability Company (LLC), which develops and sells tangible personal property worldwide. The Indiana Department of Revenue ("Department") conducted a sales/use tax audit for tax years 2002 through 2008 (the "Years at Issue"). Pursuant to the audit, the Department determined that Taxpayer purchased and used certain tangible personal property without paying sales tax or self-assessing use tax. As a result, the Department's audit assessed use tax on certain purchases of tangible personal property, where there was no documentation to show that taxes were paid.

Taxpayer timely protested the assessments of use tax for the Years at Issue and submitted additional documentation to support its protest. Prior to an administrative hearing, the Department examined the additional documentation, which Taxpayer submitted. The Department determined that Taxpayer had provided sufficient documentation on certain purchases, for which sales tax was paid. The Department thus adjusted the assessments accordingly. Nonetheless, Taxpayer continued its protest on the remaining assessments.

A hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales and Use Tax – Imposition.

DISCUSSION

The audit assessed use tax on certain purchases where Taxpayer did not have documentation showing sales tax was paid at the time of the purchases. Taxpayer, to the contrary, claimed that it was not responsible for the use tax because it paid sales tax at the time of the purchases.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid 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).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). Indiana also imposes a complementary excise tax called "the use tax" 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). "Use" means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The use tax is functionally equivalent to the sales tax. See Rhoades v. Indiana Dep't of State Revenue, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

By complementing the sales tax, the use tax ensures that non-exempt retail transactions (particularly out-of-state retail transactions) that escape sales tax liability are nevertheless taxed. *Id.*; USAir, Inc. v. Indiana Dep't of State Revenue, 623 N.E.2d 466, 468–69 (Ind. Tax Ct. 1993). The use tax ensures that, after such goods arrive in Indiana, the retail purchasers of the goods bear their fair share of the tax burden. To trigger imposition of Indiana's use tax, tangible personal property must (as a threshold matter) be acquired in a retail transaction. *Id.* A taxable retail transaction occurs when (1) a party acquires tangible personal property as part of its ordinary business for the purpose of reselling the property; (2) that property is then exchanged between parties for consideration; and (3) the property is used in Indiana. See IC § 6-2.5-1-2; IC § 6-2.5-4-1(b), (c); IC § 6-2.5-3-2(a). An exemption from use tax is granted for transactions where the sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4.

IC § 6-8.1-5-1(b), in part, states "[i]f the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest."

IC § 6-8.1-5-4, in pertinent part, provides:

(a) Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

(b) A person must retain the books and records described in subsection (a), and any state or federal tax return that the person has filed:

(1) For an unlimited period, if the person fails to file a return or receives notice from the department that the person has filed a suspected fraudulent return, or an unsigned or substantially blank return.

During the audit period, Taxpayer did not maintain and produce adequate records. Thus, the Department was unable to determine whether the sales tax on certain purchases was properly paid. As a result, the Department's audit assessed use tax based on the best information available at the time of the audit. Subsequently, the Department adjusted the assessments for the Years at Issue because Taxpayer has provided sufficient documentation concerning certain purchases.

At the administrative hearing, Taxpayer's representative stated that Taxpayer did not dispute any assessment on legal grounds. Rather, Taxpayer's representative explained that Taxpayer was not able to timely produce adequate records showing that the sales tax was properly paid because the records were in the possession of Taxpayer's vendors. Taxpayer's representative further stated that the only issue was that Taxpayer needed additional time to obtain the necessary documentation from its vendors to support that sales tax was paid on certain purchases. Thus, Taxpayer's representative requested that the Department allow Taxpayer additional ten (10) days because Taxpayer was waiting for the requested documentation from its vendors. The Department thus allowed Taxpayer additional 10 days to submit the documentation.

Subsequently, Taxpayer submitted additional three (3) boxes of documentation and one CD to the Department. However, both Taxpayer and its representative were not able to explain or demonstrate that the documentation submitted supported its assertion that the sales tax was paid on certain purchases, which use tax was imposed pursuant to the audit.

Thus, Taxpayer has not met its burden of proof demonstrating that the proposed assessment is not correct.

FINDING

Taxpayer's protest is respectfully denied.

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