

**Letter of Findings Number: 04-20110291**  
**Sales and Use Tax**  
**For Tax Years 2008-2009**

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**ISSUE**

**I. Sales and Use Tax—Imposition.**

**Authority:** IC § 6-2.5-1-2; IC § 6-2.5-1-27; IC § 6-2.5-2-1; IC § 6-2.5-4-1; 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 of its sales transactions on the basis that the transactions are for "web-based computer programs."

**STATEMENT OF FACTS**

Taxpayer is an Indiana retailer. As the result of an audit, the Indiana Department of Revenue ("Department") determined that for the tax years 2008 and 2009, Taxpayer had neither paid sales tax nor remitted use tax on purchases that were subject to sales and use tax. The Department also determined that Taxpayer had not collected sales tax on certain of its sales transactions that were subject to sales tax. Therefore, the Department issued proposed assessments for use tax, sales tax, and interest. Taxpayer protested. An administrative hearing was held, and this Letter of Findings results. Further facts will be supplied as required.

**I. Sales and 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).

The Department determined that Taxpayer failed to collect and remit the correct amount of sales tax on its sale of "web-based computer programs." The Department determined that the amounts that Taxpayer's customers pay for its "Automation Services" and its "Tracker Services" represented charges for the use of "web-based computer programs" that involved "pre-written computer software." Taxpayer asserts that these charges are not for the use of "pre-written computer software."

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." A retail transaction is defined as occurring when a person "acquires tangible personal property... and transfers that property to another person for consideration." IC § 6-2.5-4-1(b)(1)-(2). Additionally, IC § 6-2.5-4-1(c)(2) provides that it "does not matter whether the property is transferred... alone or in conjunction with other property or services." Tangible personal property also includes prewritten computer software. IC § 6-2.5-1-27.

During the hearing, Taxpayer provided service contracts, brochures, and other information about the services in question. Based on the information provided, the Department agrees that Taxpayer has met its burden of demonstrating that the transactions do not involve the right to use "pre-written computer software."

**FINDING**

Taxpayer's protest is sustained.

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