

Letter of Findings Number: 04-20110475
Sales Tax
For the Years 2008-2010

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ISSUE

I. Sales Tax—Exemptions.

Authority: IC § 6-2.5-3-7; IC § 6-2.5-4-5; IC § 6-2.5-8-8; IC § 6-8.1-5-1.

Taxpayer protests the Department's assessment of sales tax on sales to two customers.

STATEMENT OF FACTS

Taxpayer is a municipally-owned utility. The Indiana Department of Revenue ("Department") audited Taxpayer and determined that it sold various utility services to customers without receiving proper exemption certificates from the customers. As a result, the Department assessed additional sales tax and interest. Taxpayer protested the assessment related to two customers. The Department conducted an administrative hearing and this Letter of Findings results. Additional facts will be supplied as necessary.

I. Sales Tax—Exemptions.

DISCUSSION

Taxpayer protests the assessment of additional sales tax on utilities sold to two customers.

Under IC § 6-8.1-5-1(c):

If the person has a surety bond guaranteeing payment of the tax for which the proposed assessment is made, the department shall furnish a copy of the proposed assessment to the surety. The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

IC § 6-2.5-8-8 provides:

A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate **on forms and in the manner prescribed by the department.** A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase. **(Emphasis added.)**

IC § 6-2.5-3-7 provides in relevant part:

(a) 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. However, the person or the retail merchant can produce evidence to rebut that presumption.

(b) A retail merchant is not required to produce evidence of nontaxability under subsection (a) if the retail merchant receives from the person who acquired the property an exemption certificate which certifies, in the form prescribed by the department, that the acquisition is exempt from the use tax.

For the years at issue, Taxpayer accepted Form ST-105s from its customers. However, Form ST-105 explicitly provides it cannot be used for utility purchases. Thus, the exemption certificates were not "on forms and in the manner prescribed by the department." For utility purchases by an end customer such as an individual or business, a Form ST-109 must be issued by the entity claiming tax exemption.

Absent a proper exemption certificate, IC § 6-2.5-3-7 requires Taxpayer to produce evidence of nontaxability. In this case, after the hearing, Taxpayer provided information to substantiate that the utility purchases for two customers were not subject to sales tax under IC § 6-2.5-4-5(c)(3). Thus, Taxpayer's protest is sustained with regard to two customers to the extent Taxpayer's documented evidence substantiates that the customers are not subject to sales tax.

FINDING

Taxpayer's protest is sustained based on the information provided by Taxpayer.

Posted: 04/25/2012 by Legislative Services Agency

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