

Letter of Findings Number: 04-20110540
Sales and Use Tax
For Tax Years 2008 and 2009

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ISSUE

I. Sales and Use Tax—Property Used Outside of Indiana.

Authority: IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-8.1-5-1.

Taxpayer protests the assessment of use tax on property that is delivered and used outside of Indiana.

STATEMENT OF FACTS

Taxpayer is an S corporation operating a contracting business out of a Kentucky location. Taxpayer's administrative office is located in Indiana. Taxpayer lays fiber optic cable for customers located outside the state of Indiana. After an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer owed additional use tax and made assessments of use tax and interest for the 2008 and 2009 tax years. The Department found that Taxpayer had made a variety of equipment purchases on which the Indiana use tax was not remitted to the Department. 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—Property Used Outside of Indiana.

DISCUSSION

The Department determined that Taxpayer had purchased various pieces of equipment that are subject to Indiana use tax. Taxpayer had paid Kentucky sales tax on each of the transactions at a rate of six percent of the purchase price. Since the Indiana tax rate is seven percent and Taxpayer received a credit for the six percent paid to Kentucky, the Department made an assessment for one percent of the purchase price on each of the transactions.

As noted previously, The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

IC § 6-2.5-3-2(a) provides, "An excise tax, known as the use tax, is imposed 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." "Use" is defined at IC § 6-2.5-3-1(a) as "the exercise of any right or power of ownership over tangible personal property." "Storage" is defined at IC § 6-2.5-3-1(b) as "the keeping or retention of tangible personal property in Indiana for any purpose except the subsequent use of that property solely outside Indiana."

Taxpayer asserts that its equipment purchases are not subject to Indiana use tax because the equipment was not used in Indiana. Taxpayer maintains that the equipment was delivered to its Kentucky business location, was used exclusively in Kentucky and Tennessee, and did not come into Indiana. Taxpayer states that all its customers are outside of Indiana, it runs its business operations out of the Kentucky location, and that it is only its administrative office that is located in Indiana.

During the course of the protest Taxpayer provided invoices, delivery documentation, its client list, and various other documents to demonstrate that the equipment was delivered to Kentucky and used exclusively in Kentucky and Tennessee. Therefore, Taxpayer has met its burden of demonstrating that these pieces of equipment were not delivered to or used in Indiana.

FINDING

Taxpayer's protest to the imposition of use tax on equipment delivered to and used outside of Indiana is sustained.

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