

Letter of Findings Number: 04-20110484
Use Tax
For the Years 2008-2010

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Use Tax—Leases.

Authority: IC § 6-2.5-1-21; IC § 6-8.1-5-1; [45 IAC 2.2-4-27](#).

Taxpayer protests the Department's assessment of use tax on a contract.

STATEMENT OF FACTS

Taxpayer is a medical practice in Indiana. As part of its medical practice, Taxpayer will periodically request imaging for its patients. Taxpayer entered into a contract with an unrelated third party ("Imaging Company") to provide imaging equipment and operators.

The Indiana Department of Revenue ("Department") audited Taxpayer and determined that the contract between Taxpayer and the Imaging Company constituted a lease of tangible personal property. The Department assessed use tax on Taxpayer's payments pursuant to the contract. Taxpayer protested the assessment, the Department conducted an administrative hearing and this Letter of Findings results. Additional facts will be supplied as necessary.

I. Use Tax—Leases.

DISCUSSION

Taxpayer protests the assessment of additional use tax on payments made pursuant to a contract with Imaging Company. The issue is whether the contract between Taxpayer and Imaging Company is a lease of tangible personal property.

IC § 6-8.1-5-1(c) states in relevant part, "[t]he 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 § 6-2.5-1-21 states:

(a) "Lease" or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration and may include future options to purchase or extend. "Lease" or "rental" does not include:

- (1) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
- (2) a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100) or one percent (1 [percent]) of the total required payments; or
- (3) providing tangible personal property along with an operator for a fixed or indeterminate period, if:**

(A) the operator is necessary for the equipment to perform as designed; and

(B) the operator does more than maintain, inspect, or set up the tangible personal property.

(b) "Lease" or "rental" includes agreements covering motor vehicles and trailers in which the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. 7701(h)(1).

(c) The definition of "lease" or "rental" set forth in this section applies throughout this article, regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the uniform commercial code ([IC 26-1](#)), or other provisions of federal, state, or local law.

(d) This section applies only to leases or rentals entered into after June 30, 2003, and has no retroactive effect on leases or rentals entered into before July 1, 2003. **(Emphasis added).**

The Department cited to [45 IAC 2.2-4-27](#)(d)(3)(A), which states:

The renting or leasing of tangible personal property, together with the services of an operator shall be subject to the tax when control of the property is exercised by the lessee. Control is exercised when the lessee has exclusive use of the property, and the lessee has the right to direct the manner of the use of the property. If these conditions are present, control is deemed to be exercised even though it is not actually exercised.

Taxpayer asserts that it does not control either the equipment or the personnel provided to operate the equipment. Taxpayer argues this point despite language to the contrary in the contract between Taxpayer and Imaging Company, most notably that equipment and personnel would be leased to Taxpayer and that Taxpayer

would "control and supervise the Personnel to the same extent as if [Taxpayer] employed the personnel directly."

While the Department understands Taxpayer's contentions, the language of the contract indicates a lease of tangible personal property and explicit control over the personnel responsible for using the equipment, even though the personnel are explicitly Imaging Company's employees.

The Department recognizes Taxpayer's substance over form arguments. However, in a case such as this, the plain terms of the contract controlled. If Taxpayer and Imaging Company seek an arrangement, such as one with the lack of control asserted by Taxpayer, Taxpayer and Imaging Company must so indicate that relationship in their written contracts. As such, Taxpayer has not affirmatively established that its contract with Imaging Company is anything other than a lease as defined by IC § 6-2.5-1-21.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 06/27/2012 by Legislative Services Agency

An [html](#) version of this document.