

Letter of Findings: 04-20110520
Gross Retail Tax
For the Years 2008, 2009, and 2010

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ISSUE

I. Fixed Asset Listing – Gross Retail Tax.

Authority: IC § 6-2.5-2-1(a); IC § 6-2.5-2-1(b); IC § 6-2.5-3-1(a); IC § 6-2.5-3-2(a); IC § 6-8.1-5-1(c); Rhoades v. Ind. Dep't of State Revenue, 774 N.E.2d 1044 (Ind. Tax Ct. 2002).

Taxpayer argues the assessment of sales/use tax on the purchase of an item listed in the audit report as a "fixed asset" was erroneous.

STATEMENT OF FACTS

Taxpayer is an Indiana periodontal practice. The Department of Revenue ("Department") conducted an audit of Taxpayer's business records and found that Taxpayer owed additional sales/use tax. Taxpayer disagreed with a portion of the assessment and submitted a protest to that effect. An administrative hearing was scheduled but Taxpayer chose not to take part in that hearing. This Letter of Findings is based upon the information contained with the protest file.

I. Fixed Asset Listing – Gross Retail Tax.

DISCUSSION

The Department's audit found that Taxpayer had purchased a \$519 item designated as a "fixed asset" and concluded that Taxpayer owed sales/use tax. Taxpayer produced an invoice indicating that the sales tax was paid at the time of the original transaction.

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. Ind. Dep't of State Revenue, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

Because the Department's audit determined that Taxpayer had apparently failed to pay sales tax at the time it purchased the \$519 "fixed asset," Taxpayer was responsible for paying the complementary use tax.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "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."

At the time of its protest, Taxpayer submitted a June 2009 original invoice for the transaction. The invoice indicated that the item cost \$945, the delivery cost was \$45, and that sales tax was \$68. The total price on the invoice was \$1,038.

Taxpayer explains that this particular invoice "was paid for in two installments of \$519 each...." The \$519 transaction included in the audit report was apparently one of the two installment payments made for the June 2009 purchase.

Based on the information provided, Taxpayer has met its burden under IC § 6-8.1-5-1(c) of establishing that the \$519 included sales tax and that the audit should be adjusted to reflect the fact that tax was included in the original purchase price.

FINDING

Taxpayer's protest is sustained.

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