

**Letter of Findings Number: 04-20120289**  
**Sales/Use Tax**  
**For Tax Years 2008 - 2010**

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**ISSUE**

**I. Sales/Use Tax—Imposition.**

**Authority:** IC § 6-8.1-5-1; IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-8.1-5-4.

Taxpayer protests the Department's proposed assessment of use tax.

**STATEMENT OF FACTS**

Taxpayer is a company doing business in Indiana. Taxpayer was audited by the Indiana Department of Revenue ("Department"). As a result of the audit, the Department determined that Taxpayer owed additional use tax and interest. Following the audit, Taxpayer filed a protest. A hearing was held and this Letter of Findings results. Further facts will be supplied as required below.

**I. Sales/Use Tax—Imposition.**

**DISCUSSION**

At the outset, the Department notes that the burden of proving a proposed assessment is wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c). Regarding sales and use tax, Indiana imposes a sales tax on retail transactions and a complementary use tax on tangible personal property that is stored, used, or consumed in the state. IC § 6-2.5-2-1; IC § 6-2.5-3-2.

Taxpayer argues that it already paid Indiana sales tax on the items assessed or that the items represented nontaxable items such as membership fees. Taxpayer maintains that its records were destroyed in a 2009 fire at its owner's home. Taxpayer has provided a copy of a statement from the owner's insurance company documenting a check related to an April 5, 2009, loss. However, the fire does not explain the issues related to the customer's records after that date.

Under IC § 6-8.1-5-4(a),

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

In this case, Taxpayer's records presented to the Department's auditor did not demonstrate that sales tax had been paid or that use tax had been accrued and remitted to the Department. After the assessment, Taxpayer produced seven invoices for various items on which it claims sales tax was paid and which in fact list sales tax as a separate item. According to Taxpayer, these items were listed as having "American Express" as the vendor. Taxpayer has provided sufficient information to conclude that these items should be removed from the assessment. However, the removal of these items is contingent on Taxpayer providing the Department billing statements from American Express listing the purchases and providing information to demonstrate that the payments listed represented payments of the invoice amounts charged.

Taxpayer also protested various other items, notably magazine subscriptions and items for which the vendor was listed as "BBB". For the magazine subscriptions, Taxpayer has not presented sufficient information to establish that Indiana sales tax was paid upon purchase; therefore, Taxpayer's protest is denied. For the "BBB" transactions, Taxpayer has provided sufficient information to conclude that the charges do not represent the sale of tangible personal property or amounts paid for any other taxable transaction. Therefore, Taxpayer's protest is sustained with regard to the "BBB" transactions.

For the remaining items in the assessment, notwithstanding the information provided with regard to the fire which destroyed a portion of Taxpayer's records, Taxpayer has not provided sufficient legal or factual grounds to demonstrate that the Department's assessment was incorrect.

**FINDING**

Taxpayer's protest is sustained subject to audit review of the documentation Taxpayer has provided with regard to the "American Express" payments related to the specific invoices provided by Taxpayer. Taxpayer's protest is sustained with regard to "BBB" transaction. Taxpayer's protest is otherwise respectfully denied.

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