

Letter of Findings: 04-20120359
Gross Retail Tax
For the Years 2005 through 2010

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ISSUE

I. Sales Tax – Exempt Transactions.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-4; IC § 6-2.5-8-9; IC § 6-8.1-5-1; IC § 6-8.1-5-4; Dep't of Treasury of Ind. v. Dietzen's Estate, 21 N.E.2d 137 (1939); Indiana Dep't. of Revenue v. Interstate Warehousing, 783 N.E.2d 248 (Ind. 2003); Sales Tax Information Bulletin 21 (May 2002).

Taxpayer protests the assessment of gross retail tax on its lawn care services.

STATEMENT OF FACTS

Taxpayer is an Indiana qualified subchapter S corporation that primarily provides insect and pest eradication services for commercial and residential customers. As of 2007, Taxpayer also provides lawn treatment services for commercial and residential customers. The Department of Revenue ("Department") conducted an audit review of Taxpayer's business records which resulted in the assessment of sales/use tax. Taxpayer disagreed with a portion of the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results. Additional facts will be provided as required.

I. Sales Tax – Exempt Transactions.

DISCUSSION

The Department assessed Taxpayer sales tax on its lawn care services because Taxpayer had not collected and remitted sales tax when it provided those services to its customers. Taxpayer protested the assessment of sales tax on these transactions arguing that it was providing a service and had already itself paid sales tax on the chemicals it used in providing its lawn care services.

Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a). The person who acquires property in a retail transaction is liable for the tax on the transaction and, unless exempt, shall pay the tax to the retail merchant. The retail merchant shall collect the tax as agent for the state. IC § 6-2.5-2-1(b).

Therefore, Taxpayer, as a retail merchant, has a duty to collect and remit sales tax on its sales of tangible personal property. When Taxpayer fails to collect and hold the taxes in trust for the state, Taxpayer is personally liable for the sales tax, interest, and penalties due to the state for those sales.

An exemption from use tax is granted for transactions where the sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4. There are also additional exemptions from sales tax and use tax. IC § 6-2.5-5 et seq.

When a taxpayer claims it is entitled to a tax exemption, it bears the burden of proving that the terms of the exemption have been met. Indiana Dep't. of Revenue v. Interstate Warehousing, 783 N.E.2d 248, 250 (Ind. 2003). The Department will strictly construe the exemption statutes against the taxpayer claiming the exemption. Id.

The provision of lawn care services is subject to sales tax as described in Sales Tax Information Bulletin 21 (May 2002), 25 Ind. Reg. 3939, as follows:

Sales by a Lawn Care Company

The relationship between a lawn care company and its customer is contractual. The customer agrees to pay a set price and the company agrees to apply the necessary chemicals to a lawn for its proper care and maintenance. The chemical cannot be purchased separately from the company and applied by the customer. A unitary transaction is the purchase of tangible personal property and services under a single agreement for which a total combined charge is calculated. A retail unitary transaction is a unitary transaction that is also a retail transaction. A retail transaction means a transaction that constitutes selling at retail. A lawn care application is a retail transaction because the lawn care company acquires tangible personal property (chemicals) and transfers them to its customers for consideration in the ordinary course of its regularly conducted business.

The sales tax is imposed on the gross retail income received in a retail unitary transaction. The gross retail income received includes the price of the property transferred plus any bona fide charges made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property before its transfer. Because the chemicals are not transferred until they are applied to the lawn, the application charges are included in the company's gross retail income. Therefore, the entire contract price is subject to the Indiana sales tax.

Purchases by a Lawn Care Company

The purchase of chemicals by a lawn care company to be later furnished to a customer for lawn care

treatment is a sale for resale and therefore exempt from the Indiana sales tax.

The purchase of tangible personal property other than chemicals for use in the lawn care business, such as chemical applicators, sprayers, and transport vehicles, is subject to the Indiana sales/use taxes.

In reviewing Taxpayer's assertions and as a threshold issue, it is 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." Indiana law has long held that, "In construing tax statutes a liberal rule of interpretation must be indulged in order to aid the taxing power of the state." Dep't of Treasury of Ind. v. Dietzen's Estate, 215 Ind. 528, 532, 21 N.E.2d 137, 139 (1939).

Taxpayer protests that it thought it was providing a service which was taxed similarly to its pest and insect eradication service. Taxpayer stated that on that basis, it paid sales tax when it purchased chemicals for its lawn care business and then did not charge its lawn care customers for the chemicals when it provided its services.

Taxpayer states that it does not understand why pest control and lawn care businesses are taxed differently. At the time of the audit, Taxpayer was not registered for Indiana gross retail tax since pest control businesses are not required to charge sales tax on their applications, but instead are required to charge sales tax on the chemicals when purchased from their vendors.

Lawn care companies, on the other hand, are required to charge sales tax on each application in accordance with Sales Tax Information Bulletin 21. Lawn care companies can purchase their chemicals exempt from sales tax as they are purchased for resale to their customers. Taxpayer provided the Department's auditor with sales tax invoices showing that it paid sales tax on chemicals when Taxpayer purchased the chemicals from its vendors. The Department's audit properly credited the sales tax paid by Taxpayer on these purchases in making its assessment of additional tax owed.

Taxpayer has not shown that the Department's assessment is incorrect.

FINDING

Taxpayer's protest is respectfully denied.

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