

Letter of Findings Number: 04-20120504
Sales/Use Tax
For Tax Years 2010 and 2011

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ISSUE

I. Sales/Use Tax–Unitary Transaction.

Authority: IC § 6-8.1-5-1(c); IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-4-1(b); IC § 6-2.5-1-1; [45 IAC 2.2-4-2](#).

Taxpayer protests the assessment of sales tax on unitary transactions.

STATEMENT OF FACTS

Taxpayer is a company that services appliances. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit for the tax years 2010 and 2011. As a result of the audit, the Department issued proposed assessments for sales tax and interest. Taxpayer filed a protest with the Department. An administrative hearing was conducted and this Letter of Findings ("LOF") results. Further facts will be supplied as required.

I. Sales/Use Tax–Unitary Transaction.

DISCUSSION

At the outset, the Department notes that under IC § 6-8.1-5-1(c): "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Pursuant to the Indiana code, a sales tax ("gross retail tax") is imposed on retail transactions made in Indiana unless a valid exemption is applicable. IC § 6-2.5-2-1; IC § 6-2.5-5-1 et seq. Also, a complementary 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." IC § 6-2.5-3-2(a).

The Audit Report states:

When the taxpayer billed their customers for appliance repairs they typically charged a separate "diagnostic/trip" charge but then did not further separate charges for parts and labor. The taxpayer used a line item charge that included replacement part and labor to install it.

Using as an example a repair part ("compressor") that cost \$685.61, the Audit Report states: "The taxpayer charged the sales tax on the portion of the \$685.61 that they determined was the parts portion of the 'replace compressor' charge."

IC § 6-2.5-4-1(b) states that:

A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:

- (1) acquires tangible personal property for the purpose of resale; and
- (2) transfers that property to another person for consideration.

Regarding a "unitary transaction," IC § 6-2.5-1-1 states in part:

(a) Except as provided in subsection (b), "unitary transaction" includes all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated.

And the Department also notes that [45 IAC 2.2-4-2](#) states:

(a) Professional services, personal services, and services in respect to property not owned by the person rendering such services are not "transactions of a retail merchant constituting selling at retail", and are not subject to gross retail tax. Where, in conjunction with rendering professional services, personal services, or other services, the serviceman also transfers tangible personal property for a consideration, this will constitute a transaction of a retail merchant constituting selling at retail unless:

- (1) The serviceman is in an occupation which primarily furnishes and sells services, as distinguished from tangible personal property;
- (2) The tangible personal property purchased is used or consumed as a necessary incident to the service;
- (3) The price charged for tangible personal property is inconsequential (not to exceed 10[percent]) compared with the service charge; and
- (4) The serviceman pays gross retail tax or use tax upon the tangible personal property at the time of acquisition.

(b) Services performed or work done in respect to property and performed prior to delivery to be sold by a retail merchant must however, be included in taxable gross receipts of the retail merchant.

(c) Persons engaging in repair services are servicemen with respect to the services which they render and

retail merchants at retail with respect to repair or replacement parts sold.

(d) A serviceman occupationally engaged in rendering professional, personal or other services will be presumed to be a retail merchant selling at retail with respect to any tangible personal property sold by him, whether or not the tangible personal property is sold in the course of rendering such services. If, however, the transaction satisfies the four (4) requirements set forth in 6-2.5-4- 1(c)(010), paragraph (1) [subsection (a) of this section], the gross retail tax shall not apply to such transaction.

Taxpayer, per the Audit Report, "billed their customers for appliance repairs" without separately charging for the parts and labor. Taxpayer only charged sales tax on the purported cost of the parts, but the parts were not separately and specifically listed. Taxpayer argues that although it quoted one price for labor and parts to its customers, that it nonetheless showed its customers a "tax schedule" which showed its customers what the tax amount on a part would be. Taxpayer further argued that the invoice has the part number on it, and that its customers could figure out how much the part cost by looking it up on the internet.

The Department finds that Taxpayer's invoices list the price of the labor and repair parts as one price, and thus this constitutes a unitary transaction. Taxpayer's protest is denied.

FINDING

Taxpayer's protest is denied.

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