

Letter of Findings Number: 04-20120658
Use Tax
For the Years 2009-2011

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ISSUE

I. Use Tax—Imposition.

Authority: IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-5-8.

Taxpayer protests the Department's assessment of use tax on cards used in its operations.

STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana. The Indiana Department of Revenue ("Department") audited Taxpayer and determined that Taxpayer did not self-assess use tax on various items. The Department assessed use tax on these items. Taxpayer protested a portion of the assessment, the Department conducted an administrative hearing, and this Letter of Findings results. Additional facts will be supplied as necessary.

I. Use Tax—Imposition.

DISCUSSION

Taxpayer protests the assessment of use tax on programmable cards ("cards") that it purchased. In Taxpayer's business, Taxpayer will not sell certain products directly for cash. Instead, a customer will receive a card with a predetermined amount on the card. For example, a customer wishes to purchase \$50 of products. The customer will give \$50 to Taxpayer and receive a card with \$50 loaded on the card. The card can then be swiped in order to purchase products. As the products are purchased, the balance on the card is reduced by the price of the purchased product. However, the customer pays no separate consideration for the card. The card can be retained by the customer or returned to Taxpayer. The issue in this case is use tax on Taxpayer's use of the cards.

In general, IC § 6-2.5-3-2 provides for the imposition of 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 § 6-2.5-3-4(a) states:

The storage, use, and consumption of tangible personal property in Indiana is exempt from the use tax if:

- (1) the property was acquired in a retail transaction in Indiana and the state gross retail tax has been paid on the acquisition of that property; or
- (2) the property was acquired in a transaction that is wholly or partially exempt from the state gross retail tax under any part of [IC 6-2.5-5](#), except [IC 6-2.5-5-24](#)(b), and the property is being used, stored, or consumed for the purpose for which it was exempted.

In this particular case, Taxpayer is not reselling the cards or otherwise using the cards for an exempt purpose. Instead, Taxpayer is using the cards as a method of tracking how much product is purchased and how much money is spent. Thus, the cards are used by Taxpayer within the meaning of IC § 6-2.5-3-2 and are not exempt under IC § 6-2.5-3-4.

Taxpayer raises a contention regarding the inclusion of the cards in its "cost of goods sold." At times, the Department may conduct an audit or investigation and determine that receipts are not properly being reported. In those cases, "cost of goods sold" can serve as a basis for the Department's estimate of a taxpayer's receipts subject to sales tax. The fact that an item is listed in "cost of goods sold" does not serve as a basis for exempting or excluding the item for use tax purposes. The cards are not sold, unlike other items listed under Taxpayer's "cost of goods sold" which were purchased exempt for resale under IC § 6-2.5-5-8 and taxed upon ultimate sale.

Further, Taxpayer did not list the sale of the cards as an item sold in its "revenue." Thus, Taxpayer's contention that its sales tax and food and beverage tax should be reduced because the cards are taxable lacks legal and factual support.

FINDING

Taxpayer's protest is respectfully denied.

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