

**Letter of Findings: 04-20120726; 09-20120691
Sales Tax, Use Tax, and County Innkeeper Tax
For the Years 2009, 2010, and 2011**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales Tax / Innkeeper's Tax—Hotel Accommodations and Meals.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-4-4; IC § 6-2.5-5-25; IC § 6-2.5-8-8; IC § 6-8.1-5-1; IC § 6-9-8-2; [45 IAC 2.2-5-55](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Sales Tax Information Bulletin 10 (June 2008); Sales Tax Information Bulletin 10 (July 2004); Letter of Findings 04-20100498 (January 12, 2011).

Taxpayer argues that it was not required to collect sales tax and the Marion County innkeeper's tax on the sale of hotel accommodations to not-for-profit entities.

II. Use Tax—Imposition.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessment of use tax on its purchases from "qualified vendors."

STATEMENT OF FACTS

Taxpayer operates a hotel located in Indiana providing overnight accommodations, meeting rooms, and parking to its customers. Taxpayer was audited by the Indiana Department of Revenue ("Department"). As a result of that audit, the Department issued assessments of gross retail tax ("sales tax"), use tax, and county innkeeper's tax. Taxpayer protested the assessments. An administrative hearing was held, and this Letter of Findings results.

I. Sales Tax / Innkeeper's Tax—Hotel Accommodations and Meals.

DISCUSSION

The Department assessed Taxpayer additional sales tax on certain hotel accommodations rented to individuals for which Taxpayer did not collect sales tax. Specifically, the Department found that Taxpayer did not collect sales tax on rooms rented to guests that claimed an exemption from sales tax based upon the guest's status as a member of a not-for-profit organization.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Pursuant to IC § 6-2.5-2-1, Indiana imposes a sales tax on retail transactions. IC § 6-2.5-2-1 provides, as follows:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

(Emphasis added).

Additionally, IC § 6-2.5-4-4 provides:

- (a) A person is a retail merchant making a retail transaction when the person rents or furnishes rooms, lodgings, or other accommodations, such as booths, display spaces, banquet facilities, and cubicles or spaces used for adult relaxation, massage, modeling, dancing, or other entertainment to another person:
 - (1) if those rooms, lodgings, or accommodations are rented or furnished for periods of less than thirty (30) days; and
 - (2) if the rooms, lodgings, and accommodations are located in a hotel, motel, inn, tourist camp, tourist cabin, gymnasium, hall, coliseum, or other place, where rooms, lodgings, or accommodations are regularly furnished for consideration.
- (b) Each rental or furnishing by a retail merchant under subsection (a) is a separate unitary transaction regardless of whether consideration is paid to an independent contractor or directly to the retail merchant.
- (c) For purposes of this section, "consideration" includes a membership fee charged to a customer.
- (d) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction if:
 - (1) the person is a promoter that rents a booth or display space to an exhibitor; and
 - (2) the booth or display space is located in a facility that:
 - (A) is described in subsection (a)(2); and

(B) is operated by a political subdivision (including a capital improvement board established under [IC 36-10-8](#) or [IC 36-10-9](#)) or the state fair commission.

This subsection does not exempt from the state gross retail tax the renting of accommodations by a political subdivision or the state fair commission to a promoter or an exhibitor.

Accordingly, Indiana imposes sales tax on the rental of hotel accommodations in Indiana, and the retail merchant has a duty to collect the sales tax on these transactions. In addition to this state-level sales tax, Marion County also imposes an "innkeepers' tax" on hotel accommodations. The relevant statute for the "innkeeper's tax" is IC § 6-9-8-2, which provides, in relevant part:

(a) Each year a tax shall be levied on every person engaged in the business of renting or furnishing, for periods of less than thirty (30) days, any lodgings in any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which lodgings are regularly furnished for a consideration.

(b) This tax shall be in addition to the state gross retail tax and use tax imposed on such persons by [IC 6-2.5](#). The county fiscal body may adopt an ordinance to require that the tax be reported on forms approved by the county treasurer and that the tax shall be paid monthly to the county treasurer. If such an ordinance is adopted, the tax shall be paid to the county treasurer not more than twenty (20) days after the end of the month the tax is collected. If such an ordinance is not adopted, the tax shall be imposed, paid, and collected in exactly the same manner as the state gross retail tax is imposed, paid, and collected under [IC 6-2.5](#).

(c) All of the provisions of [IC 6-2.5](#) relating to rights, duties, liabilities, procedures, penalties, definitions, exemptions, and administration shall be applicable to the imposition and administration of the tax imposed by this section except to the extent such provisions are in conflict or inconsistent with the specific provisions of this chapter or the requirements of the county treasurer. Specifically, and not in limitation of the foregoing sentence, the terms "person" and "gross income" shall have the same meaning in this section as they have in [IC 6-2.5](#).

Taxpayer argues that it is relieved of its duty to collect sales tax on the rental of rooms to these not-for profits because it relied upon exemption certificates that the guests provided.

Taxpayer's argument relies on the rule stated in IC § 6-2.5-8-8 that provides, as follows:

(a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

(b) The following are the only persons authorized to issue exemption certificates:

(1) retail merchants, wholesalers, and manufacturers, who are registered with the department under this chapter;

(2) organizations which are exempt from the state gross retail tax under [IC 6-2.5-5-21](#), [IC 6-2.5-5-25](#), or [IC 6-2.5-5-26](#) and which are registered with the department under this chapter; and

(3) other persons who are exempt from the state gross retail tax with respect to any part of their purchases.

(c) The department may also allow a person to issue a blanket exemption certificate to cover exempt purchases over a stated period of time. The department may impose conditions on the use of the blanket exemption certificate and restrictions on the kind or category of purchases that are exempt.

(d) A seller that accepts an incomplete exemption certificate under subsection (a) is not relieved of the duty to collect gross retail or use tax on the sale unless the seller obtains:

(1) a fully completed exemption certificate; or

(2) the relevant data to complete the exemption certificate;

within ninety (90) days after the sale.

(e) If a seller has accepted an incomplete exemption certificate under subsection (a) and the department requests that the seller substantiate the exemption, within one hundred twenty (120) days after the department makes the request the seller shall:

(1) obtain a fully completed exemption certificate; or

(2) prove by other means that the transaction was not subject to state gross retail or use tax.

(Emphasis added).

Taxpayer's assertion assumes that it accepted valid exemption certificates for the transactions at issue.

However, as will be seen below, the exemption certificates were not valid.

IC § 6-2.5-8-8(a) provides that, "The person shall issue the certificate on forms and in the manner prescribed by the department" and that "[a] seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase." (Emphasis added). The form prescribed by the Department is "Form ST-105" which states in Section 3:

Sales to **nonprofit organizations** claiming exemption pursuant to Sales Tax Information Bulletin 10. (May not be used for personal hotel rooms and meals.)

The exemption for certain purchases of tangible person property by not-for-profits is provided in IC § 6-2.5-5-25, as follows:

- (a) Transactions involving tangible personal property or service are exempt from the state gross retail tax, if the person acquiring the property or service:
- (1) is an organization described in section 21(b)(1) of this chapter;
 - (2) primarily uses the property or service to carry on or to raise money to carry on its not-for-profit purpose; and
 - (3) is not an organization operated predominantly for social purposes.
- (b) Transactions occurring after December 31, 1976, and involving tangible personal property or service are exempt from the state gross retail tax, if the person acquiring the property or service:
- (1) is a fraternity, sorority, or student cooperative housing organization described in section 21(b)(1)(A) of this chapter; and
 - (2) uses the property or service to carry on its ordinary and usual activities and operations as a fraternity, sorority, or student cooperative housing organization.

(Emphasis added).

Additionally, [45 IAC 2.2-5-55](#)(b)(3) states, in pertinent part, that "purchases for the private benefit of any member of the organization or for any other individual, such as meals or lodging, are not eligible for exemption."

The Department also refers to Sales Tax Information Bulletin 10 (June 2008), 20080702 Ind. Reg. 045080515NRA (**Emphasis in the original**), which states:

For a purchase by a nonprofit organization to qualify for exemption, the article purchased must be used for the same purpose as that for which the organization is being exempted. **Purchases for the private benefit of any member of the organization or for individuals, such as meals and lodgings, are not eligible for exemption.**

EXAMPLE: A nonprofit organization is hosting a 3 day convention for its members in Indianapolis. The organization rents meeting rooms in a hotel to conduct its educational meetings. The rental of the rooms will be exempt from the the *[sic]* sales tax and local innkeepers' tax if applicable.

Sales of meals during a meeting of the organization are taxable because the meals are provided for the convenience of the organization and its members. Such meals are taxable even when served in conjunction with a meeting which is furthering their nonprofit purpose.

At the same convention, the organization reserves and pays for, out of its treasury, **the cost of four hotel rooms to be used by its officers for lodging. The lodgings provided for the officers by the organization are not exempt from the sales tax or the innkeepers' tax if applicable. The rental of rooms for its officers or members is a private benefit for the individual and is not for the purpose for which the organization exists.**

Sales Tax Information Bulletin 10 (July 2004), 27 Ind. Reg. 3385, also stated:

In order for a purchase by a nonprofit organization to qualify for exemption, the article purchased must be used for the same purpose as that for which the organization is being exempted. Purchases for the private benefit of any member of the organization or for individuals, such as meals and lodgings, are not eligible for exemption. If a member of the organization purchases a meal or lodging, even if the member is to be reimbursed by the organization, the purchase is not exempt, and the member must pay sales tax at the time of the purchase. Purchases used for social purposes are never exempt.

The Department recently noted in Letter of Findings 04-20100498 (January 12, 2011), 20110323 Ind. Reg. 04511038NRA:

The Department's stated position on the issue appears to be clear and consistent. Purchases for the private benefit of any member of a not-for-profit organization are not eligible for exemption and hotel room accommodations – secured for a not-for-profit's member – are inherently a "private benefit." Any "benefit" obtained by the sponsoring not-for-profit organization is tangential at best. As stated in Sales Tax Information Bulletin 10, [20100929-IR-045100600NRA](#), "Purchases for the private benefit of any member of the organization or for individuals, such as meals and lodgings, are not eligible for exemption." As explained in Letter of Findings 04-20090967 (April 29, 2010), "[E]ach exempt hotel room rental consists of two steps. The first step is to present a properly completed exemption certificate. The second step is to present payment by the exempt organization or governmental organization and confirm that the exemption certificate is actually being used by the exempt organization listed on the exemption certificate. Both steps are necessary and are immediately verifiable. These steps are verifiable by any retail merchant, including but not limited to hotels." See also Letter of Findings 04-20091028 (April 29, 2010).

In summary, Taxpayer, as a retail merchant entered into Indiana retail transactions for hotel accommodations without collecting sales tax. Since Taxpayer collected exemption certificates that were not proper, the Department made an assessment of sales tax against Taxpayer. Based upon the statutes and regulations provided above, Taxpayer's transactions were properly subjected to sales tax. Therefore, Taxpayer's protest to the imposition of sales tax is respectfully denied.

FINDING

Taxpayer's protest to the imposition of sales tax on hotel accommodations is respectfully denied.

II. Use Tax—Imposition.

DISCUSSION

The Department found that Taxpayer had made purchases of tangible personal property that it used in its business operations without paying sales tax at the time of the transaction or remitting use tax to the Department. Thus, the Department assessed use tax on the purchases. Taxpayer protested the assessments stating that the "purchases were done through our 'franchise qualified vendors'... [where] payments were made according to the invoices without [Taxpayer] checking that the supplier didn't add sales tax to the invoices." Taxpayer maintains that its failure to pay the sales or use tax was not intentional, but a result of it relying on the "franchise qualified vendors" invoices.

Again, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

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). An exemption from the use tax is granted for transactions where the gross retail tax ("sales tax") was paid at the time of purchase pursuant to IC § 6-2.5-3-4. Since Taxpayer did not pay sales tax at the time of purchase, the Department found that the purchases were subject to use tax.

Taxpayer made retail purchases of tangible personal property without paying sales tax or remitting use tax to the Department. Taxpayer used this property in Indiana. Taxpayer invites the Department to abate the use tax that is due because Taxpayer did not intentionally fail to pay the use tax to the Department. Taxpayer does not cite to any statute, regulation, or case law that supports its position. Therefore, the Department declines Taxpayer's invitation and is unable to depart from its initial conclusion that Taxpayer's purchases were correctly subject to Indiana use tax.

FINDING

Taxpayer's protest to the imposition of use tax is respectfully denied.

SUMMARY

Taxpayer's protests relating to sales tax, use tax, and county innkeeper's tax are respectfully denied.

Posted: 04/24/2013 by Legislative Services Agency
An [html](#) version of this document.