

Letter of Findings: 04-20120541
Use Tax
For the 2009 Tax Year

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ISSUE

I. Use Tax–Horse Purchase.

Authority: IC § 6-8.1-5-1; IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-1-27; IC § 6-2.5-5-1; [71 IAC 6.5-1-1](#); [71 IAC 6.5-1-2](#); [71 IAC 6.5-1-4](#); [45 IAC 2.2-3-4](#).

Taxpayer protests the imposition of use tax and interest on the purchase of a horse.

STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") determined that Taxpayer had not paid sales tax on a horse that he acquired in a transaction that occurred in Indiana. Given that Taxpayer had not paid sales tax, the Department issued a proposed assessment for use tax (and interest). Taxpayer filed a protest regarding the proposed assessment, and an administrative hearing was held. This Letter of Finding results from that hearing. More facts will be provided as needed below.

I. Use Tax–Horse Purchase.

DISCUSSION

At the outset, it should be noted that the Department's tax assessments are prima facie evidence that the Department's claim for the tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c).

The Department found that Taxpayer purchased a horse in Indiana by means of "claiming transactions." Regarding "claiming" and horse racing, [71 IAC 6.5-1-1](#), states in part:

- (a) A person entering a horse in a claiming race warrants that the title to the horse is free and clear of any existing claim or lien, either as security interest mortgage, bill of sale, or lien of any kind; unless before entering the horse, the written consent of the holder of the claim or lien has been filed with the stewards and the racing secretary and its entry approved by the stewards. A transfer of ownership arising from a recognized claiming race will terminate any existing prior lease for the horse.
- (b) Title to a claimed horse shall be vested in the successful claimant at the time the horse leaves the starting gate and is declared an official starter. The successful claimant shall then become the owner of the horse whether it be alive or dead, sound or unsound, or injured at any time, during the race or after. However, the successful claimant may request on the claim blank at the time the successful claimant makes the claim that the horse be tested for the presence of equine infectious anemia via a Coggins test, or other test as approved by the official veterinarian. Should this test prove positive, it shall be cause for voiding the claim. The expense of the test and the maintenance of the horse during the period requested for the test shall be the responsibility of the successful claimant, unless the test proves positive, wherein the owner or owners of the horse at the time of entry shall be responsible.

(Emphasis added).

[71 IAC 6.5-1-2](#) states:

- (a) Any horse starting in a claiming race is subject to be claimed for its entered price by any:
 - (1) licensed owner; or
 - (2) holder of a valid claim certificate; or
 - (3) licensed authorized agent acting on behalf of an eligible claimant.

(b) Every horse claimed shall race for the account of the original owner, but title to the horse shall be transferred to the claimant at the time the horse leaves the starting gate. The successful claimant shall become the owner of the horse, regardless of whether it is alive or dead, sound or unsound, or injured prior to, during, or after the race.

[71 IAC 6.5-1-4](#)(h) states:

For a period of thirty (30) days after a claim, a horse shall not start in a race in which the determining eligibility price is less than the price at which it was claimed. The day claimed shall not count for purposes of counting the applicable thirty (30) day period, and for this purpose the immediate following calendar day after the day claimed shall be the first day. The horse shall be entitled to enter whenever necessary so that the horse may start on the thirty-first calendar day following the claim for any claiming price.

(Emphasis added).

Claiming races are a method of determining the price of a horse, with the successful claimant taking title to the horse "at the time the horse leaves the starting gate and is declared an official starter." Taxpayer was the

claimant of a horse that was raced in a claiming race. The Department assessed tax based upon the claiming amount paid by Taxpayer for the horse.

Turning to Indiana sales and use tax law, 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 states:

(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.

Use tax is imposed by IC § 6-2.5-3-2(a), which states:

An 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.

Also, [45 IAC 2.2-3-4](#) further explains:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

IC § 6-2.5-1-27, which defines tangible personal property, states:

"Tangible personal property" means personal property that:

- (1) can be seen, weighed, measured, felt, or touched; or
- (2) is in any other manner perceptible to the senses.

The term includes electricity, water, gas, steam, and prewritten computer software.

(Emphasis added).

Taxpayer raises two alternative contentions. First, Taxpayer argues that he is still responsible for the purchase price, even if the horse dies. Therefore, Taxpayer asserts that the horse is intangible personal property.

However, even a dead horse is capable of being "seen, weighed, measured, felt, or touched" and thus is still tangible personal property as defined under IC § 6-2.5-1-27. Therefore, the horse is tangible personal property.

Taxpayer alternatively asserts that the horse is used on his farm for agricultural purposes. However, Taxpayer has not established that the horse was intended to be purchased for the production of food and food ingredients pursuant to IC § 6-2.5-5-1. Further, even if Taxpayer could show that the horse was used for agricultural purposes, Taxpayer has not established any exempt use for the horse.

In conclusion, Taxpayer purchased a race horse at a claiming race; Taxpayer failed to pay sales tax at the time of purchase. Taxpayer has not established that the horse was purchased for an exempt purpose. Thus use tax was properly assessed by the Department. Taxpayer has not met the burden imposed by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is respectfully denied.

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