

**Letter of Findings Number: 04-20120649**  
**Use Tax**  
**For Tax Years 2010-11**

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**ISSUE**

**I. Use Tax—Calculation.**

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

Taxpayer protests the use of two items in calculation for the 2011 projected use tax liability.

**STATEMENT OF FACTS**

Taxpayer is an Indiana business that performs construction and construction management. As the result of an audit for the tax years 2010 and 2011, the Indiana Department of Revenue ("Department") determined that Taxpayer had not paid sales tax on some taxable transactions. The Department, therefore, issued proposed assessments for use tax for these years. Due to the large volume of purchase invoices and the determination that calendar year 2010 purchases would be representative of 2011 purchases, a projection agreement for the calendar year 2011 Use Tax was signed. After protesting the inclusion of certain items in the year 2010, to be used for the 2011 projection, Taxpayer waived a hearing and this case is determined upon facts provided by Taxpayer to the Department. Further facts will be provided as required.

**I. Use Tax—Calculation.**

**DISCUSSION**

Taxpayer protests the inclusion of certain items purchased in 2010 for a projection of 2011 use tax. Taxpayer believes that the items should be excluded from the projection because they fit within the definition of excluded items according to the projection agreement. Two items are in dispute. One item is a "Street Plate" used to temporarily cover street excavations (purchased for \$9,820.00). The other item is a one-time purchase of a map for a specific project (purchased for \$179.00). Exclusion of these items from the projection would reduce Taxpayer's use tax liability in 2011.

The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as required by IC § 6-8.1-5-1(c).

The sales tax is imposed by IC § 6-2.5-2-1, which 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.

(Emphasis added).

When tangible property has not been subject to sales tax it may be subject to use tax. The use tax is defined in [45 IAC 2.2-3-4](#), which states:

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.

(Emphasis added).

The use tax is imposed by IC § 6-2.5-3-2, which states:

(a) 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.

(Emphasis added).

Taxpayer believes that the "Street Plate" and the map should be excluded from the projection because paragraph three of the projection agreement states "Capital expenditures and special projects are not included in this projection agreement." Taxpayer believes that the "Street Plate" is a capital expenditure. Taxpayer believes that the map of a city outside of Indiana is a one-time purchase for a special project.

While Taxpayer argues that "Street Plate" is a capital expenditure, Taxpayer is unable to show any proof that the "Street Plate" has been treated as a capital asset. For example, Taxpayer was not able to provide a depreciation schedule for the "Street Plate." Further, Taxpayer claims that street plates are not usually capitalized because they are a commodity item. As described by Taxpayer, except for their relative size they are indistinguishable and their value drops to either scrap or auction value after purchase.

Taxpayer argues that the out-of-state city map was a purchase for a special project. To support this argument Taxpayer asserts that the map was a one-time purchase for a specific out-of-state project in an unfamiliar area

and that the situation is unlikely to be repeated.

After review of the supplied documentation, the Department is not convinced that the "Street Plate" fits within the definition of a capital asset. Taxpayer has not provided any documentation to show that the "Street Plate" has been treated as a capital asset for any reason other than the calculation of Indiana use tax. Thus, the "Street Plate" should not be excluded from 2011 projection of Use Tax. This documentation does not prove the proposed assessments wrong and therefore Taxpayer has not proven the proposed assessments wrong as required by IC § 6-8.1-5-1(c).

Taxpayer has supplied sufficient documentation to support the assertion that the map fits within the definition of a special project. The fact that Taxpayer is an Indiana business and the claims that the purchase was a one-time purchase for a specific out-of-state project, not likely to be repeated, demonstrates the map fits within the definition of a purchase for a special project. Therefore, the use tax projection for 2011 will be recalculated via a supplemental audit after removal of the purchase price of the out-of-state city map.

**FINDING**

Taxpayer's protest is denied in part and sustained in part.

*Posted: 05/29/2013 by Legislative Services Agency*

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