

**Letter of Findings: 04-20120531**  
**Gross Retail Tax**  
**For the Years 2009 and 2010**

**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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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.

**ISSUE**

**I. Sales Tax–Exemption.**

**Authority:** IC § 6-2.5-8-8; IC § 6-8.1-5-1; [45 IAC 2.2-8-12](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Taxpayer protests the imposition of sales tax on the sales it stated were sold to exempt entities.

**STATEMENT OF FACTS**

Taxpayer is a sole proprietor who owns and operates a gas station. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayer for the 2009 and 2010 tax years. The Department's audit found that Taxpayer had made taxable sales and did not have a record of exemption certificates for any of those sales. Therefore, pursuant to the audit, Taxpayer was assessed additional sales tax. Taxpayer protested the assessment of additional sales tax. There was also a small assessment of additional use tax which Taxpayer did not protest. An administrative hearing was held, and this Letter of Findings ensues. Additional information will be provided as necessary.

**I. Sales Tax–Exemption.**

**DISCUSSION**

All 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); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

During the course of the administrative hearing, Taxpayer's representative explained that Taxpayer could provide exemption certificates for some of its customers. Taxpayer asked that the Department adjust the audit assessment to reflect the fact that it was not required to collect sales tax from the customers represented by the exemption certificates.

Taxpayer is correct that under certain circumstances, a retail merchant such as Taxpayer is not required to collect sales tax. Under IC § 6-2.5-8-8(a), "A person . . . who makes a purchase in a transaction which is exempt from the state gross retail tax and use taxes, may issue an exemption certificate to the seller instead of paying the tax." Once the purchaser provides the exemption certificate, the retail merchant is under no obligation to collect sales tax on the transaction. IC § 6-2.5-8-8(a) states 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."

Taxpayer has belatedly provided exemption certificates purportedly relevant to some of the challenged assessments. However, the certificates presented are not contemporaneous to the transactions at issue. For example, Taxpayer supplied a Form ST-105 dated March 12, 2012; however, the transactions at issues occurred prior to March 2012. Therefore, Taxpayer has not met its burden under IC § 6-8.1-5-1(c) of demonstrating that the original sales tax assessments were incorrect.

The relevant regulation is [45 IAC 2.2-8-12](#)(b) which states, "Retail merchants are required to collect sales and use tax on each sale which constitutes a retail transaction unless the merchant can establish that the item purchased will be used for an exempt purpose." The regulation cautions that, "Unless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt purpose. It is, therefore, very important to the seller to obtain an exemption certificate in order to avoid the necessity for such proof." [45 IAC 2.2-8-12](#)(d). Therefore, if the purchaser claims an exemption, the exemption certificate should be obtained at the time the transaction occurs otherwise the burden on Taxpayer of proving the transaction was exempt becomes measurably more difficult. Taxpayer will have to request that its purportedly exempt customers fill out an AD-70 form, which is the form used to allow exemption after the transaction has occurred.

There is no question that Taxpayer entered into retail transactions for which – absent an exemption – Taxpayer was required to collect and remit the sales tax.

Taxpayer has, somewhat belatedly, supplied documentation. Taxpayer has provided some exemption certificates and has been given the opportunity to provide AD-70 forms. The Department is prepared to accept the exemption certificates Taxpayer has presented, on condition that if the exemption certificate is dated after the particular transaction(s) occurred, that exemption certificate must be accompanied by a properly completed AD-70. To date, Taxpayer has not provided any AD-70 forms for the transactions in question. Taxpayer will have sixty days from the date of this letter to supply the completed AD-70 forms. At the end of this time, Taxpayer's file

will be returned to the audit division for a supplemental audit of the documentation provided.

Accordingly, Taxpayer's protest is sustained in part and denied in part. Taxpayer's protest is denied to the extent that AD-70 forms are not presented to the Department for the transactions. However, Taxpayer's protest is sustained to extent that a properly completed AD-70 form is presented to the Department, subject to the results of a supplemental audit consistent with the above.

**FINDING**

Taxpayer's protest is sustained in part and denied in part. Taxpayer's protest is denied to the extent that AD-70 forms are not presented to the Department for the transactions. However, Taxpayer's protest is sustained to extent that a completed AD-70 is presented to the Department, subject to the results of a supplemental audit.

*Posted: 08/28/2013 by Legislative Services Agency*

An [html](#) version of this document.