

Letter of Findings Number: 04-20130193
Use Tax
For Tax Years 2010-2011

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ISSUE

I. Use Tax– Car Crusher.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-5-45.8; IC § 6-8.1-5-1; [45 IAC 2.2-3-4](#).

Taxpayer protests imposition of use tax on the purchase of a car crusher.

STATEMENT OF FACTS

Taxpayer is an Indiana business. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had not paid sales tax on some taxable purchases of tangible personal property during the tax years 2010 and 2011. The Department therefore issued proposed assessments for use tax and interest. Taxpayer protests the imposition of a portion of these proposed assessments. An administrative hearing was held and this Letter of Finding results. Further Facts will be supplied as necessary.

I. Use Tax– Car Crusher.

DISCUSSION

Taxpayer protests the imposition of use tax on a car crusher. Taxpayer states that the car crusher is used for recycling purposes and is therefore exempt. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

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.

Use tax is imposed under 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.

[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.

Therefore, when tangible personal property is used, stored, or consumed in Indiana, use tax is due unless sales tax was paid at the time of the transaction.

Taxpayer protests that it is occupationally engaged as a recycler and that the car crusher is used for recycling. Taxpayer therefore believes that its purchase of the car crusher was exempt from taxes under IC § 6-2.5-5-45.8. The Department notes that this statute was not in effect until January 1, 2012 and that Taxpayer purchased the car crusher in tax year 2010. Therefore the statute to which Taxpayer has referred was not in existence when the car crusher was purchased and is not applicable to that purchase. As a result the Taxpayer has not met its burden to prove proposed assessments wrong, as provided by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

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