

Letter of Findings Number: 04-20130124
Sales Tax
For Tax Years 2009-2011

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ISSUE

I. Sales Tax– Imposition.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-5-29; IC § 6-8.1-5-1.

Taxpayer protests imposition of sales tax for the years at issue.

STATEMENT OF FACTS

Taxpayer is an Indiana business in the manufactured housing industry. As the result of an investigation, the Indiana Department of Revenue ("Department") determined that Taxpayer had under-reported sales tax as a retail merchant and had under-reported use tax as a consumer for the tax years 2009, 2010, and 2011. The Department therefore issued proposed assessments for sales tax, use tax, penalty, and interest. Taxpayer protested the imposition of a portion of the proposed sales tax assessments. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Sales Tax– Imposition.

DISCUSSION

Taxpayer protests the imposition of sales tax on a portion of the proposed sales tax assessments for the tax years 2009-11. The Department based its proposed assessments on the information available during the investigation. Taxpayer protests that the Department included some amounts which were not sales of its product and so were not subject to sales tax. 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).

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.

Therefore, when a retail merchant sells tangible personal property, the retail merchant shall collect and remit sales tax as an agent for the state.

In its investigation, the Department reviewed Taxpayer's monthly sales tax reports for the years at issue. The Department also reviewed Taxpayer's records, including but not limited to bank statements and profit and loss statements. The Department determined that Taxpayer had insufficient records to substantiate reported taxable sales for the investigation period. Also, the investigation report explains that the Department examined the available documentation and arrived at a sales tax error percentage for new home sales. The Department divided total homes sold in 2010 by gross receipts in 2010 to arrive at the error rate. The Department applied that error rate to Taxpayer's gross receipts for all three years under investigation. The Department then calculated sales tax based on sixty-five percent of the remaining amount, as provided by IC § 6-2.5-5-29.

Taxpayer's protest consists of stating that in 2009 and 2010 it sold financing contracts which it had originated with its manufactured housing customers. Taxpayer argues that, since these are not sales of tangible personal property, the amounts which it received on the sale of the contracts should not be subject to sales tax. Taxpayer provided a copy of a November 10, 2009, agreement between itself and the purchaser of some of those contracts in support of its protest, along with a copy of a check from the purchaser dated November 11, 2009.

Since the sale of the financing contract was not the sale of tangible personal property, the amount of the November 11, 2009, check will be removed from gross receipts for 2009. The Department will then multiply the remaining amount of gross receipts by the error rate previously calculated. Sales tax will be imposed on sixty-five percent of the resulting amount. The Department will then send a new billing reflecting these recalculations. Since Taxpayer did not supply any supporting documentation for its claim that similar sales took place in 2010, Taxpayer has not met the burden of proving the proposed assessments wrong, as required by IC § 6-8.1-5-1(c), and no adjustments will be made for 2010.

FINDING

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

Posted: 10/30/2013 by Legislative Services Agency
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