DEPARTMENT OF STATE REVENUE

04-20110633.SLOF

Supplemental Letter of Findings Number: 04-20110633
Use Tax
For Tax Years 2008-10

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ISSUE

I. Use Tax–Equipment.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-5-8; IC § 6-8.1-5-1; 45 IAC 2.2-3-4; 45 IAC 2.2-5-15.

Taxpayer protests the imposition of use tax on the purchase of equipment.

STATEMENT OF FACTS

Taxpayer is an Indiana business with operations in Indiana and other states. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had not paid sales tax on certain purchases of tangible personal property at the time of purchase during the tax years 2008, 2009, and 2010. The Department therefore issued proposed assessments for use tax and interest for those years. Taxpayer protested the Department's determination that sales or use tax was due on two of the items purchased during those years. An administrative hearing was held and the Department issued Letter of Findings 04-20110633, which denied Taxpayer's protest due to lack of documentation verifying Taxpayer's protest. Taxpayer requested a rehearing, which the Department granted. Taxpayer failed to appear at the scheduled rehearing, which the Department regarded as a withdrawal of Taxpayer's protest. Later, Taxpayer contacted the Department to explain that the letter granting the rehearing had been sent to an old address and to request that the Department reschedule the rehearing. The Department agreed to reschedule the administrative rehearing and this Supplemental Letter of Findings results. Further facts will be supplied as required.

I. Use Tax–Equipment.

DISCUSSION

Taxpayer protests the imposition of use tax on its purchase of two items, a multi terrain loader and an excavator. The Department based its assessments on the grounds that Taxpayer had purchased the vehicles and had not paid sales tax at the time of purchase. Taxpayer states that it rented the two items to a related company ("Related") and that one of the two items never entered the state of Indiana. 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.

Also of relevance is IC § 6-2.5-5-8(b), which states:

Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property.

The exemption is further clarified by 45 IAC 2.2-5-15, which states:

(a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.

(b) General rule. Sales of tangible personal property for resale, rental or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or

lease it;

(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and

(3) The property is resold, rented or leased in the same form in which it was purchased.

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Therefore, when tangible personal property is sold to a purchaser who purchases the property to resell, rent or lease it and the purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business and the property is resold, rented or leased in the same form in which it was purchased, such purchases are exempt from sales and use taxes, as provided by IC § 6-2.5-5-8(b) and 45 IAC 2.2-5-15.

In the instant case, Taxpayer purchased two vehicles upon which the Department imposed use tax, but which Taxpayer argues are not subject to use tax. The first vehicle is the excavator. Taxpayer states that the excavator was never brought into the state of Indiana, but rather was delivered to a state bordering Indiana ("Border State") from an equipment dealer in a third state. Taxpayer states that the excavator was delivered to Border State and that it was used exclusively in that state until it was sold, thereby never entering Indiana. Thus, Taxpayer argues, since the excavator was never in Indiana, no Indiana use tax is due.

In support of its protest, Taxpayer provided a delivery receipt which shows that the excavator was delivered to Border State from the equipment dealer in the third state. The listed consignee is a supply company in Border State, not Taxpayer. This document does not state where Taxpayer took possession of the excavator. Also, Taxpayer provided documentation from Related, which showed the days on which Related used the excavator. That documentation lists predominant use of the excavator in Border State, but it also lists five days of use in Indiana. These five days of use in Indiana in and of themselves constitute storage, use, or consumption of tangible personal property in Indiana of property which was acquired in a retail transaction. Such activity constitutes use in Indiana and is subject to sales or use tax, as provided by IC § 6-2.5-3-2(a). Therefore, Taxpayer's argument that the excavator was used exclusively outside of Indiana is unpersuasive and Taxpayer has not met the burden of proving the proposed assessments wrong, as required by IC § 6-8.1-5-1(c).

The second vehicle in question is a multi terrain loader. Taxpayer states that both the loader and the excavator were rented to Related and provided documentation from Related showing the days on which Related used the loader as well as the excavator. Taxpayer acknowledges that it did not collect sales tax from Related for the rental of the two vehicles, but states that it has now adjusted its business operations to reflect the rental arrangement with Related. Taxpayer has provided a copy of a monthly sales tax report it made to the Department in March of 2010. The Department notes that, while the monthly report does report sales tax due from Taxpayer as a retail merchant, the report itself does not establish that the sales tax resulted from the rental of the two vehicles in question.

Taxpayer argues that it was renting the two vehicles even if it did not collect sales tax on those rentals. The Department notes that Taxpayer has not established that there was a rental agreement for either the loader or the excavator. Neither has Taxpayer established that there were actual rental payments from Related to Taxpayer for either the loader or the excavator. The only documentation supplied regarding the use of the vehicles is from Related, not from Taxpayer. That documentation lists Related's use of the vehicles. Related's documentation does not list rental payments to Taxpayer. Without documentation of such a stream of rental payments, the Department cannot agree that Taxpayer was renting the two vehicles.

Taxpayer has expressed concern that the Department has not reviewed the documentation which it has submitted in support of its protest. The Department takes this opportunity to affirm that it has now twice thoroughly reviewed all of the documentation submitted by Taxpayer in this matter. Simply put, Taxpayer has not met the burden of proving the proposed assessments wrong, as required by IC § 6-8.1-5-1(c). Taxpayer's documentation does not establish that its protest points are correct. The Department's initial imposition of use tax and the denial of Taxpayer's protest in the initial Letter of Findings were correct.

FINDING

Taxpayer's protest is denied.

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