

Letter of Findings Number: 04-20130166
Sales Tax
For Tax Years 2009-2011

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ISSUE

I. Sales Tax— Postage.

Authority: IC § 6-2.5-1-1; IC § 6-2.5-1-5; IC § 6-2.5-2-1; IC § 6-2.5-4-1; IC § 6-2.5-9-3; IC § 6-8.1-5-1.

Taxpayer protests the Department's determination that sales tax was due on payments related to postage.

STATEMENT OF FACTS

Taxpayer is an Indiana business and retail merchant. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had not collected and remitted the proper amount of sales tax for the years 2009, 2010, and 2011. The Department therefore issued proposed assessments for sales tax, penalty, and interest. Taxpayer protests the Department's calculation of sales tax due. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as necessary.

I. Sales Tax—Calculation of sales tax.

DISCUSSION

Taxpayer protests the Department's imposition of sales tax on amounts paid to Taxpayer by its customers for postage. The Department considered the amounts to be part of the retail transactions conducted between Taxpayer and its clients. Taxpayer protests that the postage payments were not part of the retail transactions and were separate payments meant to reimburse Taxpayer for postage only. Taxpayer therefore believes that the amounts paid for postage are 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 provided 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).

The Department also refers to IC § 6-2.5-4-1, which states in relevant part:

- (a) A person is a retail merchant making a retail transaction when he engages in selling at retail.
- (b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:
 - (1) acquires tangible personal property for the purpose of resale; and
 - (2) transfers that property to another person for consideration.
- (c) For purposes of determining what constitutes selling at retail, it does not matter whether:
 - (1) the property is transferred in the same form as when it was acquired;
 - (2) the property is transferred alone or in conjunction with other property or services; or
 - (3) the property is transferred conditionally or otherwise.

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Next, IC § 6-2.5-9-3 provides:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes (as described in [IC 6-2.5-3-2](#)) to the department; holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state. If the individual knowingly fails to collect or remit those taxes to the state, he commits a Class D felony.

(Emphasis added).

Therefore, when a retail merchant makes a retail sale, that merchant is required to collect and remit the sales tax on that transaction to the state.

In this case, the Department reviewed Taxpayer's sales and determined that Taxpayer had not collected and remitted sales tax on the amounts it received from its customers regarding postage. The Department imposed sales tax on Taxpayer as a retail merchant. The first relevant statute is IC § 6-2.5-1-1, which states:

- (a) Except as provided in subsection (b), "unitary transaction" includes all items of personal property and

services which are furnished under a single order or agreement and for which a total combined charge or price is calculated.

(b) "Unitary transaction" as it applies to the furnishing of public utility commodities or services means the public utility commodities and services which are invoiced in a single bill or statement for payment by the consumer.

(Emphasis added).

Also of relevance is IC § 6-2.5-1-5(a), which, during the years at issue, provided:

Except as provided in subsection (b), "gross retail income" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for:

- (1) the seller's cost of the property sold;
- (2) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (3) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (4) delivery charges; or
- (5) consideration received by the seller from a third party if:
 - (A) the seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
 - (B) the seller has an obligation to pass the price reduction or discount through to the purchaser;
 - (C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
 - (D) the price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

For purposes of subdivision (4), delivery charges are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of property, including but not limited to transportation, shipping, postage, handling, crating, and packing.

(Emphasis added).

The Department reviewed Taxpayer's records and determined that Taxpayer was charging its customers postage as part of its delivery charges, but had not been charging sales tax on those amounts, as required by IC § 6-2.5-1-5(e). The Department therefore issued proposed assessments for sales tax which Taxpayer should have charged as a retail merchant under IC § 6-2.5-2-1(b).

In the course of the protest process, Taxpayer provided documentation and analysis in support of its position that it did not charge postage costs to its customers as part of its delivery charges. After review of this material, the Department agrees that Taxpayer was not charging postage to its customers as part of its delivery costs and therefore was not required to collect sales tax on those amounts. Taxpayer has met the burden imposed by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is sustained.

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