

**Letter of Findings Number: 04-20130322**  
**Use Tax**  
**For Tax Years 2008-2010**

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**ISSUE**

**I. Use Tax–Imposition.**

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

Taxpayer protests the assessment of use tax on certain purchases.

**STATEMENT OF FACTS**

Taxpayer is a manufacturer 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 all taxable purchases of tangible personal property upon which sales tax was due 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 imposition of use tax on some of those items included in the Department's taxable purchases calculations. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

**I. Use Tax–Imposition.**

**DISCUSSION**

Taxpayer protests the imposition of use tax on some purchases which the Department had included in its use tax liability calculations for the tax years 2008-10. The Department based its determinations on a review of Taxpayer's records. Due to the amount of purchases in question, the Department used a sample and projection method to determine Taxpayer's compliance rate. That compliance rate was then applied to Taxpayer's total purchases for all three years. The Department imposed use tax on the difference between the amount of sales and use tax paid by Taxpayer and the amount which the Department determined was due after application of the compliance rate.

Taxpayer protests that some of those items of tangible personal property included as taxable in the sample had actually had sales tax paid at the time of purchase and that the compliance rate was therefore incorrect. Taxpayer believes that those purchases upon which it states that sales tax was paid should be removed from the Department's calculations of use tax due and that the compliance rate should be recalculated and reapplied. 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.

(Emphasis added).

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.

In this case, the Department gathered a sample population of Taxpayer's purchases during the tax years at issue and determined which purchases were taxable and non-taxable. The Department then determined upon which taxable purchases sales tax had been paid at the time of purchase. The remaining taxable purchases were determined to have use tax due. The Department determined the percentage of taxable purchases upon which neither sales nor use tax had been paid. This compliance percentage was then applied to Taxpayer's total purchases for the three tax years at issue.

In the course of the protest process, Taxpayer provided invoices in support of its position that sales tax was paid on certain purchases or that the invoice in question was for services and not for the sale of tangible personal property. Taxpayer states that these invoices show that sales tax was paid on purchases which the Department

had considered as subject to use tax. Taxpayer therefore requests that the Department take this new information into account and recalculate and reapply the compliance percentage for these years.

The Department will conduct a supplemental audit and will review the invoices supplied by Taxpayer in support of its protest. The supplemental audit will, at its discretion and after verification, remove any of the purchases listed on the supplied invoices from the taxable purchases calculations and will then recalculate and reapply the compliance rate. The supplemental audit will constitute the Department's final determination in this matter.

**FINDING**

Taxpayer's protest is sustained subject to verification via supplemental audit.

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