

Letter of Findings Number: 04-20130631
Sales Tax
For Tax Years 2010-12

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUE

I. Sales Tax—Imposition.

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

Taxpayer protests the assessment of sales tax.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation. Taxpayer is in the business of preparing and installing vehicle graphics, signs, and banners. The Department of Revenue ("Department") conducted a sales and use tax audit for the tax years 2010-12. The audit resulted in the assessment of additional sales tax for the years at issue. Taxpayer protested the imposition of sales tax on certain items. An administrative hearing was conducted and this Letter of Findings results. Further facts will be presented as required.

I. Sales Tax—Imposition.

DISCUSSION

Taxpayer protests a portion of the proposed sales tax assessments for the tax years 2010, 2011, and 2012. Due to the large volume of Taxpayer's records, the Department assessed additional sales tax based on a sample and projection method. Taxpayer agreed that records for May and June of the tax year 2010 would be used to project sales tax calculations for the tax years 2010, 2011, and 2012. The Department reviewed certain purchases and imposed sales tax on certain items of tangible personal property ("TPP") upon which sales tax had not been paid at the time of purchase. Taxpayer argues that the Department erred in assessing sales tax on transactions of design charges. Taxpayer further argues that the sampling for undocumented exempt sales included a onetime job which distorts the error rate used to determine additional taxable sales. 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.

Therefore, as a retail merchant, Taxpayer was responsible for collecting sales tax on transactions involving TPP to its customers. [45 IAC 2.2-4-1](#) further states:

- (a) Where ownership of tangible personal property is transferred for a consideration, it will be considered a transaction of a retail merchant constituting selling at retail unless the seller is not acting as a "retail merchant".
- (b) All elements of consideration are included in gross retail income subject to tax. Elements of consideration include, but are not limited to:
 - (1) The price arrived at between purchaser and seller.
 - (2) Any additional bona fide charges added to or included in such price for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other services performed in respect to or labor charges for work done with respect to such property prior to transfer.

(3) No deduction from gross receipts is permitted for services performed or work done on behalf of the seller prior to transfer of such property at retail.

Taxpayer refers to [45 IAC 2.2-4-2\(a\)](#) which states:

Professional services, personal services and services in respect to property not owned by the person rendering such service are not "transactions of a retail merchant constituting selling at retail", and are not subject to gross retail tax.

Taxpayer states that [45 IAC 2.2-4-2\(a\)](#) means that the design charges are not subject to sales tax.

Taxpayer was able to provide copies of the original invoices. Taxpayer charged its customers for design charges and installation charges on the same invoice. In the ordinary course of Taxpayer's business, Taxpayer acquired TPP and transferred ownership of that property for consideration. In essence, Taxpayer's customers wanted vehicle graphics, signs, and banners; Taxpayer designed and installed them for a single unitary price. As such, the price charged is subject to sales tax under [45 IAC 2.2-1-1\(a\)](#) which states:

For purposes of the state gross retail tax and use tax, such taxes shall apply and be computed in respect to each retail unitary transaction. A unitary transaction shall include all items of property and/or services for which a total combined charge or selling price is computed for payment irrespective of the fact that services which would not otherwise be taxable are included in the charge or selling price.

The evidence presented by Taxpayer demonstrates that Taxpayer's invoices represented unitary transactions, which would subject the entire amounts to sales tax. Unitary transactions are further defined by 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.

While Taxpayer's reference to [45 IAC 2.2-4-2\(a\)](#) would allow that design services alone are not subject to sales tax, the documentation provided shows that the transactions in question involved the sale of TPP as well as the provision of services. Therefore, since the graphics, signs, and banners were purchased as part of a unitary transaction the entirety of the invoices are subject to sales tax, as provided by IC § 6-2.5-1-1(a).

Regarding the onetime job, Taxpayer has not provided evidence to show that similar one-time jobs did not occur during other months of the audit period. It is reasonable for the Department to include a one-time job that occurred during the sample period since it is logical to assume that other months included other one-time jobs as well as the sample month. Thus, Taxpayer has not shown that the error rate calculated with the inclusion of the one-time job was distorted.

In conclusion, regarding the inclusion of invoices which include services as well as TPP, Taxpayer has not met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessments wrong. Regarding the inclusion of the one-time job in the sample, Taxpayer has not met the burden imposed under IC § 6-8.1-5-1(c). Taxpayer is denied.

FINDING

Taxpayer's protest is denied.

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