

## DEPARTMENT OF STATE REVENUE

04-20130590.LOF

**Letter of Findings Number: 04-20130590**  
**Use 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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. 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 Department's assessment of use tax on certain items.

**STATEMENT OF FACTS**

Taxpayer is an Indiana business. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had not paid sales tax on all purchases of tangible personal property during the tax years 2010, 2011, and 2012. 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 purchases. An administrative hearing was held and this Letter of Findings results. Further facts will be presented as required.

**I. Use Tax—Imposition.****DISCUSSION**

Taxpayer protests that use tax is not due on certain transactions which the Department determined were subject to use tax during the tax years 2010-12. Taxpayer states that sales tax was paid at the time of purchase or lease of these items and that the imposition of use tax is therefore inappropriate. The Department based its determination of use tax due on a review of the available documentation during the audit. 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 ("TPP") is used, stored, or consumed in Indiana, use tax is due unless sales tax was paid at the time of the transaction, or if there is an applicable exemption to sales and use taxes. A transaction subject to the state's sales tax necessarily involves the transfer of TPP.

In the course of the protest process, Taxpayer stated that it had paid sales tax on its purchases of certain TPP upon which the Department had imposed use tax. Specifically, Taxpayer protests that it paid sales tax when it purchased three categories of TPP from a specific out-of-state vendor ("Vendor"). In support of its position, Taxpayer provided a letter from Vendor stating that applicable sales tax was charged on these transactions, as well as a copy of the leasing contract for one group of the items at issue.

After a review of the letter from Vendor and the leasing agreement for the group of items under protest, the Department cannot agree that these documents establish that Indiana sales tax was paid on the transactions at the time of purchase. The letter from Vendor only states that sales tax was included in the amount charged to Taxpayer on the transactions. Neither Vendor nor Taxpayer was able to supply invoices which showed that sales tax was charged and paid on these transactions. Also, a review of the Department's records showed that there is no sales tax account for Vendor. Neither is there a sales tax account for any entity at the address of Vendor. Without a sales tax account to which Vendor could remit Indiana sales tax, the Department is not convinced that Indiana sales tax was charged and remitted.

Similarly, the leasing agreement has a provision which states, "You will pay when due, either directly or to us on demand, all local, state and federal taxes, fines or penalties which may be imposed or levied upon the Lease and the Products." This statement in and of itself does not establish that Indiana sales tax was in fact paid on the leasing activities. Again, without invoices for these transactions and without a sales tax account for Vendor, the Department is not convinced that Vendor collected Indiana sales tax. Therefore, Taxpayer is liable for Indiana use tax, as provided by IC § 6-2.5-3-2(a) and [45 IAC 2.2-3-4](#). Taxpayer has not met the burden of proving the proposed use tax assessments incorrect, as required by IC § 6-8.1-5-1(c).

### **FINDING**

Taxpayer's protest is denied.

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