

Letter of Findings Number: 04-20140189
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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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 § 6-2.5-3-2; IC § 6-2.5-4-1; IC § 6-8.1-5-1; [45 IAC 2.2-3-4](#).

Taxpayer protests the assessment of use tax.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit for the years 2010-12. The audit resulted in the assessment of additional use tax and interest for the years at issue. Taxpayer protested the imposition of use tax on certain tax payments it had made to the Department. An administrative hearing was conducted and this Letter of Findings results. Further facts will be presented as required.

I. Use Tax—Imposition.

DISCUSSION

Taxpayer protests a portion of the proposed use tax assessments for the tax years 2010, 2011, and 2012. The Department assessed additional use tax based on an analysis of the Taxpayer's sales and use tax returns filed with the Department. Taxpayer argues that the Department erred because it assessed use tax on use tax payments. 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).

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 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. The state's use tax is triggered when a person exercises ownership over TPP.

Taxpayer made monthly use tax payments in the amount of \$750 to the Department. Over the course of the years at issue Taxpayer paid \$750 each month in use tax except for December of 2010 when Taxpayer paid a total of \$16,780 in use tax. The Department assessed use tax on \$9,000 of use tax payments. Taxpayer has provided documentation to support its claim that use tax was assessed on use tax payments. Taxpayer also was not credited the amount of use tax it had paid.

In conclusion, Taxpayer has met the burden imposed under IC §6-8.1-5-1(c) of proving the proposed

assessments wrong regarding the protested items. Taxpayer has provided sufficient documentation to support its protest. The Department will remove the use tax assessments on the use tax payments at issue and Taxpayer will be credited with the use tax already paid. Taxpayer is sustained.

FINDING

Taxpayer's protest is sustained.

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