

Letter of Findings: 04-20120527
Gross Retail Tax
For the Years 2009 and 2010

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ISSUE

I. Postage Expenses – Gross Retail Tax.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-1-5; IC § 6-2.5-2-1(a); IC § 6-2.5-2-1(b); IC § 6-2.5-4-1(b); IC § 6-2.5-4-1(a); IC § 6-2.5-9-3(2); IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); [45 IAC 2.2-1-1\(a\)](#).

Taxpayer argues it was not required to collect sales tax on postage costs when it charged its customers for delivering printed materials.

STATEMENT OF FACTS

Taxpayer is an Indiana commercial printing company which provides its customers such items as business cards, envelopes, wedding materials and the like. The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's business records. The audit resulted in the assessment of additional sales tax. Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Postage Expenses – Gross Retail Tax.

DISCUSSION

Taxpayer provides commercial printing services for its customers. On occasion, Taxpayer will mail the completed printed materials directly to its customers' client lists on behalf of the printing customers. Taxpayer charges its customers postage, delivery, and printing costs.

Taxpayer collected sales tax on delivery charges and the printed materials. Taxpayer did not charge its customers for postage costs.

The audit concluded that Taxpayer should have collected sales tax for the postage because the postage expenses were part of "unitary transaction[s]" billed Taxpayer's customers. As authority for doing so, the audit report cited to [45 IAC 2.2-1-1\(a\)](#) which states in part:

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.

Taxpayer disagrees stating that, "The intent of the parties was that the postage would not be included as part of the overall transaction" and that "neither Taxpayer nor its customers intended or consider postage to be part of the overall sale." Taxpayer explains that, "Taxpayer covers the postage and then seeks reimbursement from the customer as a convenience to both Taxpayer and its customers." In addition, Taxpayer notes that "virtually all of Taxpayer's customers would be unwilling to pay sales tax on postage."

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012).

IC § 6-2.5-2-1(a) imposes sales tax on retail transactions made in Indiana. IC § 6-2.5-1-2 defines a retail transaction as "a transaction of a retail merchant that constitutes selling at retail as described in IC § 6-2.5-4-1... or that is described in any other section of IC § 6-2.5-4." IC § 6-2.5-4-1(a) provides that "[a] person is a retail merchant making a retail transaction when he engages in selling at retail." IC § 6-2.5-4-1(b) further explains that a person sells at retail when he "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration."

"The retail merchant is required to collect the tax [due on the retail transaction] as [an] agent for the state." IC § 6-2.5-2-1(b). The retail merchant "has a duty to remit Indiana [sales] or use taxes... to the department, [to] hold 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." IC § 6-2.5-9-3(2).

In Taxpayer's case, it maintains that the amount it charged its customers for postage is exempt from sales tax and makes these specific arguments:

- [Taxpayer] did not mark up the postage to obtain a profit;
- The postage was always separately stated on an invoice or included on an entirely separate invoice;
- After Audit, all of [Taxpayer's] clients now pay all postage fees directly to the USPS ["United States Postal Service"] and all orders are essentially processed the same exact way;
- There is no economic customer benefit to paying [Taxpayer] versus the USPS.

Summarizing, Taxpayer explains that the up-front payment and reimbursement process used by [Taxpayer] was a mere formality and not part of the agreed-upon transaction. It did not provide economic benefit to [Taxpayer's] customer and [Taxpayer] realized no profit from the same.

IC § 6-2.5-1-5 provides in part as follows;

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).

IC § 6-2.5-1-5 classifies as taxable "gross retail income" the entire amount a retail merchant charges for "delivery and installation." IC § 6-2.5-1-5 specifically states that the vendor includes all costs associated with "delivery and installation" including "shipping, postage, handling, crating, and packing."

Taxpayer makes a secondary argument addressing those instances in which customers were purportedly only invoiced a single charge for "postage." Taxpayer's point is that a convenience store, drug store, or post office selling its customers stamps would not be required to collect sales tax on those stamp sales. However, Taxpayer is not in the convenience store or drug store business and is not in the business of selling postage stamps to its clientele. Taxpayer is a commercial printing business in the business of preparing customers' printed materials and – in some instances – delivering those materials on behalf of the customers. The fact that in certain circumstances, the price billed for "postage" might have been stated on a separate invoice does not circumvent the rule in IC § 6-2.5-1-5 that "gross retail income" includes "delivery charges" and that all costs associated with performing the delivery specifically includes "postage." Further, a review of documentation provided by Taxpayer to emphasize its point indicates that Taxpayer's argument is somewhat disingenuous. The separate "invoices" provided by Taxpayer are USPS forms (PS Form 3600-R) which document a postage transaction between itself and the USPS; the form establishes that Taxpayer is purchasing postage from the USPS on behalf of its customers, but the transactions at issue in the Letter of Findings are those between Taxpayer and its customers not those between Taxpayer and the USPS.

Taxpayer charges its customers to deliver printed materials; the delivery charges are subject to sales tax and the law does not permit a deduction for the cost – separately stated or not – of the postage. Taxpayer has not met its burden under IC § 6-8.1-5-1(c) of establishing that the proposed assessment is wrong.

FINDING

Taxpayer's protest is respectfully denied.

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