

Indiana Department of State Revenue

Revenue Ruling #2008-14ST

December 3, 2008

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

Sales/Use Tax – Purchase of Digital Goods for Online Games

Authority: IC 6-2.5-1-2, IC 6-2.5-1-27, IC 6-2.5-2-1, IC 6-2.5-4-1

Taxpayer requests that the Department rule on the following issues:

1. Is the purchase of points which are subsequently used to purchase virtual goods online subject to sales tax? If so, should the tax be collected when the points are added or when the points are redeemed?
2. Are virtual goods sold via micro transactions taxable?
3. Is use tax due when points are given to customers for promotional purposes? If so, what is the tax base?

STATEMENT OF FACTS

Taxpayer is a corporation domiciled in New York. The company allows users to play online games after a free software download. The company is developing an online program that allows, but does not require, users to add money to a "virtual wallet" which the user can then purchase items, such as clothing, for virtual characters while playing the game. Once purchased, the digital goods are not stored on the user's personal computer; the items purchased only exist in the user's computer memory while the user is playing the game. The user's digital purchases are managed from the company's game database on its servers.

The company also intends to make the virtual wallet available for online programs in which the game software is downloaded for a fee and for which a paid subscription is

required. Players will have the same ability to purchase digital goods for in-game use as described above.

DISCUSSION

IC 6-2.5-2-1 imposes a gross retail 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.” IC 6-2.5-4-1(b) then provides that a person sells at retail when he “(1) acquires tangible personal property . . . and (2) transfers that property to another person for consideration.”

Tangible personal property, as provided by IC 6-2.5-1-27, is “personal property that: (1) can be seen, weighed, measured, felt, or touched; or (2) **is in any other manner perceptible to the senses**. The term includes electricity, water, gas, steam, and prewritten computer software.”

Transactions involving the exchange of money for points do not involve a transfer of tangible personal property. Therefore, these transactions are not subject to sales tax because no retail sale takes place.

Transactions involving the exchange of points for virtual goods are not retail sales of a retail merchant. Virtual goods are not tangible personal property.

RULING #1

Is the purchase of points, which are subsequently used to purchase virtual goods online, subject to sales tax? If so, should the tax be collected when the points are added or when the points are redeemed?

The Department rules that Taxpayer’s consumers’ exchanges of money for points are not subject to sales tax. Points are not tangible personal property and are therefore not taxable since no retail sale takes place.

RULING #2

Are virtual goods sold via micro transactions taxable?

The Department rules that the sale of virtual goods sold via micro transactions are not subject to sales tax. The virtual goods are not tangible personal property sold in a retail transaction by a retail merchant.

RULING #3

Is use tax due when points are given to customers for promotional purposes? If so, what is the tax base?

The Department rules that no use tax is due when the company gives points to the customer for promotional purposes because the company is not selling at retail in this scenario.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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