September 23, 2009

Mr. Michael Kennedy
Indiana Purebred Dog Alliance
5842 N. LaSalle St.
Indianapolis, IN 46220

RE: Sales Tax – Dogs Sold by Hobby Breeders

Dear Mr. Kennedy:

This advisory letter is written in response to our meeting on September 16, 2009, as well as your correspondence dated September 14, 2009. This letter discusses the sales tax implications of sales by hobby breeders, as well as the appropriate procedures by which hobby breeders should collect and remit Indiana sales tax.

I. Sales by Hobby Breeders

In your correspondence and as part of our discussions, you requested guidance on the taxability of dogs sold by hobby breeders. In particular, you noted/asked:

Our central issue is whether a hobby dog breeder who occasionally sells puppies is required to register with IDOR and collect sales tax or is this considered a casual sale exempt from such requirements. What constitutes a casual sale?

In general, IC 6-2.5-2-1(a) imposes sales tax on retail transactions made in Indiana. The Department’s regulation, found at 45 IAC 2.2-1-1(d), recognizes that, with some exceptions, casual sales are not retail transactions and the receipts from such sales are not subject to sales tax. The regulation provides in pertinent part:

A casual sale is an isolated or occasional sale by the owner of tangible personal property purchased or otherwise acquired for his use or consumption, where he is not regularly engaged in the business of making such sales.

To be clear, in order for there to be a casual sale, the following elements must be present:

A. the sale must be of an isolated or occasional nature;
B. the tangible personal property being sold must have been purchased or acquired for the seller’s own use or consumption; and
C. the seller must not be regularly engaged in the business of selling such property.

Due to the nature of being a hobby breeder of dogs, the breeder is presumed to be regularly engaged in the business of selling dogs. It also is presumed that a dog being sold by a hobby breeder was not acquired for the breeder’s own use. Therefore, there exists a rebuttable presumption that sales of dogs by hobby breeders are not casual sales and do not qualify for exemption from sales tax on that basis. Accordingly, all sales of dogs in Indiana by a hobby breeder are retail transactions and subject to sales tax unless an exemption otherwise applies based on the identity of the purchaser or the nature of the transaction.\(^1\)

II. SALES TAX COLLECTION PROCEDURES

In general, a retail merchant is required to charge, collect and remit sales tax. IC 6-2.5-2-1. If an exemption applies, an exempt purchaser must demonstrate to the retail merchant that it qualifies not to have sales tax imposed. An exempt purchaser is required by IC 6-2.5-8-8 to provide a retail merchant with a "proper exemption certificate" prescribed by the Department. In order to purchase a dog exempt from sales tax, a person or group must present the breeder with a completed exemption certificate (Form ST-105\(^2\)) certifying that the person or group is exempt from sales tax regarding the transaction. Once presented with a completed exemption certificate, the breeder “has no duty to collect or remit the state gross retail or use tax on that purchase.” IC 6-2.5-8-8(a).

To collect and remit sales tax, a person or group must apply for a Registered Retail Merchant’s Certificate (available on the Form BT-1) with the Department. A non-refundable fee of $25 must be remitted with the application. Applications are available online at: [https://secure.in.gov/apps/dor/bt1/](https://secure.in.gov/apps/dor/bt1/). Additionally, a hard copy of the application may be downloaded at: [http://www.in.gov/dor/files/bt-1.pdf](http://www.in.gov/dor/files/bt-1.pdf). If a person does not have access to the Internet, a copy may be obtained by contacting the Department.

Pursuant to IC 6-2.5-6-1(a), a merchant liable for collecting sales tax must file a sales tax return monthly and pay sales tax collected during that month. However, if a merchant’s sales tax liability for the previous year was less than $1,000, then the merchant may file sales tax returns annually. IC 6-2.5-6-1(d). The amount of sales tax due from a merchant is the merchant’s total gross retail income from taxable transactions made during the reporting period multiplied by 7%. IC 6-2.5-6-7. However, as compensation for merchants who collect and timely remit sales tax, a merchant is entitled to deduct and retain a collection allowance from the amount of sales tax otherwise required to be

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\(^1\) For example, Indiana law recognizes as exempt from sales tax transactions whereby dogs are sold to police agencies to be used in official capacities or transactions whereby dogs are sold to non-profit agencies to be used as companion animals. Another example of an exempt transaction is one whereby a dog is sold to another merchant that resells the animal. Additionally, provided that possession transfers outside of Indiana, sales of dogs to out-of-state purchasers are not subject to Indiana sales tax, though these transactions may be subject to another state’s applicable taxes.

remit to the Department. IC 6-2.5-6-10(a). If the merchant’s sales tax liability accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year did not exceed $60,000, the collection allowance is equal to .73% of the merchant’s sales tax liability accrued during a calendar year. IC 6-2.5-6-10(b)(1).

The Indiana Department of Revenue offers INTax as a means to fully manage business tax obligations. By using INTax, a taxpayer can manage tax accounts, file & pay online, as well as register for Electronic Funds Transfer and more - all in one convenient place. INTax is available online at: https://www.intax.in.gov/web/security/login.aspx. Additional information useful to new and small businesses can be found at the Department’s New and Small Business Education Center. The New and Small Business Education Center is available online at: http://www.in.gov/dor/3939.htm.

Please note that the conclusions expressed in this advisory letter are those of the writer and therefore not binding on the Department. If you have any questions or concerns, please feel free to contact the undersigned at 317-233-6488.

Sincerely,

Shane B. Corbin
Policy Analyst

Thomas D. Conley
Administrator