DEPARTMENT OF STATE REVENUE

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Letter of Findings: 08-0651
Sales and Use Tax
For the Year 2007

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ISSUES

I. Sales and Use Tax – Imposition.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-3-6; IC § 6-8.1-5-1; 45 IAC 2.2-1-1.

Taxpayer protests the imposition of sales and use tax on a vehicle given by his employer as a partial payment of employment.

II. Tax Administration – Penalty.

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

In June 2007, Taxpayer, an Indiana resident, received a company vehicle as partial payment of a severance package from his employer ("Employer"). Taxpayer then applied for a certificate of title and filed a ST-108E form, claiming an exemption from sales and use tax at a branch of the Indiana Bureau of Motor Vehicles ("BMV"). In August 2008, the BMV conducted an internal desk audit and imposed sales tax, interest, and ten percent (10 [percent]) penalty. Taxpayer protests the imposition of sales tax and penalty. A hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales and Use Tax – Imposition.

DISCUSSION

All tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid. The taxpayer bears the burden of proving that any assessment is incorrect pursuant to IC § 6-8.1-5-1(c).

Indiana imposes an excise tax on a purchaser who acquires tangible personal property in a retail transaction made in Indiana. IC § 6-2.5-2-1 provides:

(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.

In the present case, Employer is not regularly engaged in the business of selling vehicles. Therefore, this is not a retail transaction involving transfer of tangible personal property.

However, 45 IAC 2.2-1-1(d) provides:

The Indiana gross retail tax is not imposed on gross receipts from casual sales except for gross receipt from casual sales of motor vehicles and sales of rental property. 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. (Emphases added)

Taxpayer claimed that Employer gave this vehicle to him as partial payment of a severance package. Since Employer is not regularly engaged in the business of selling vehicles, a casual sale of a motor vehicle by Employer is deemed to have occurred because Taxpayer "otherwise acquired" the vehicle "for his use" from Employer.

Taxpayer documented that he had paid income tax on the value of the vehicle which was treated as income imputed to him. Taxpayer supposed that since he had paid income tax on the vehicle, he would not also have to pay sales or use tax on the acquisition of the vehicle. Taxpayer is mistaken. Theoretically, Employer could have paid Taxpayer $14,018 for his service. Then, Taxpayer could have purchased the vehicle in question from Employer for $14,018. As a result, Taxpayer would have to pay income tax on the $14,018 he received as income. Then, Taxpayer would also have to pay sales tax on the vehicle he acquired from the Employer. Here, instead of paying Taxpayer $14,018 for his service, Employer paid Taxpayer the vehicle in question, valued at $14,018, in return for Taxpayer's service. Taxpayer, therefore, could be liable for both income and sales tax resulting from the acquisition of the vehicle from Employer. Furthermore, an Employer's internal memorandum stated that Taxpayer "is eligible to purchase" the vehicle in question. Employer also provided Taxpayer a "Bill of Sale" as a receipt regarding this transaction. Taxpayer paid the income tax, but not the sales tax. Thus, Taxpayer is responsible for paying the sales tax when he "otherwise acquired" the vehicle for his use. 45 IAC 2.2-1-1(d).

Indiana also imposes a use tax on tangible personal property, including a vehicle, which is stored, used, or consumed in the state. IC § 6-2.5-3-2 states:

(a) An excise tax, known as the use tax, is imposed on the storage, use or consumption of tangible 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.

(b) The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:

(1) is acquired in a transaction that is an isolated or occasional sale; and

(2) is required to be titled, licensed, or registered by this state for use in Indiana.

Pursuant to IC § 6-2.5-3-4(a)(1), property is exempt from the use tax "if the property was acquired in a retail transaction in Indiana and the state gross retail tax has been paid on the acquisition of that property." In this case, taxpayer did not pay the gross retail tax upon acquisition of the vehicle.

IC § 6-2.5-3-6(b) states that "[t]he person who uses, stores, or consumes the tangible personal property acquired in a retail transaction is personally liable for the use tax." IC § 6-2.5-3-6(d) further states: "a person liable for the use tax imposed in respect to a vehicle... under section 2(b) [IC 6-2.5-3-2(b)] of this chapter shall pay the tax:

[] to the titling agency when the person applies for a title for the vehicle... unless the person presents proof to the agency that the use tax or state gross retail tax has already been paid with respect to the purchase of the vehicle... or proof that the taxes are inapplicable because of an exemption under this article."

In the present case, Taxpayer must pay either sales tax or, in turn, use tax, pursuant to the above statutes and regulations. Taxpayer did not pay the use tax to the BMV upon titling the vehicle, and Taxpayer did not state a valid exemption from use tax. Therefore, the Department's assessment of sales tax or use tax stands.

FINDING

Taxpayers' protest on the sales tax is respectfully denied.

II. Tax Administration – Penalty.

DISCUSSION

Taxpayer also protests the assessment of the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1, the Department may assess a ten (10) percent negligence penalty if the taxpayer:

(1) fails to file a tax return;

(2) fails to pay the full amount of tax shown on the tax return;

(3) fails to remit in a timely manner the tax held in trust for Indiana (e.g., a sales tax); or

(4) fails to pay a tax deficiency determined by the Department to be owed by a taxpayer.

45 IAC 15-11-2(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in 45 IAC 15-11-2(c), in part, as follows:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

(1) the nature of the tax involved;

(2) judicial precedents set by Indiana courts;

(3) judicial precedents established in jurisdictions outside Indiana;

(4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;

(5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer has demonstrated that he had reasonable cause to believe that he is entitled to the exemption. Thus, Taxpayer's protest on the imposition of negligence penalty is sustained.

FINDING

Taxpayer's protest on imposition of negligence penalty is sustained.

SUMMARY

For the reasons discussed above, Taxpayer's protest on imposition of sales and use tax is respectfully denied. But, Taxpayer's protest on imposition of negligence penalty is sustained.

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