

Letter of Findings: 09-0498
Gross Retail Tax
For the Years 2001 through 2008

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ISSUES

I. Rental Equipment – Gross Retail Tax.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-5-1 to -40; IC § 6-2.5-5-8; IC § 6-8.1-5-1(c); [45 IAC 2.2-5-15](#).

Taxpayer asks that the Department provide credit for sales tax amounts paid at the time it purchased rental equipment.

II. Ten-Percent Negligence Penalty.

Authority: IC § 6-8.1-5-1(c); IC § 6-8.1-10-2.1(a)(3); IC § 6-8.1-10-2.1(a)(4); IC § 6-8.1-10-2.1(d); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

Taxpayer asks that the Department exercise its authority to abate the ten-percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana S-corporation in the business of renting dental equipment to one of its shareholders. The Department of Revenue (Department) conducted an audit review of taxpayer's records and found that it failed to collect sales tax on the "stream" of rental income it received from its shareholder. Therefore, the Department issued proposed assessments of approximately \$25,000. Taxpayer protested on the ground that it was entitled to offset the assessment by the amount of sales tax it paid on the purchase of the equipment it purchased. This Letter of Findings results.

I. Rental Equipment – Gross Retail Tax.

DISCUSSION

Indiana imposes a sales tax on retail transactions in Indiana. IC § 6-2.5-2-1. The legislature has provided a number of exemptions to the imposition of that tax. See IC § 6-2.5-5-1 to -40. One of those exemptions is provided at IC § 6-2.5-5-8 which states that, "Transactions involving tangible personal property... are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property."

The rental exemption set out in IC § 6-2.5-5-8 is further explained in [45 IAC 2.2-5-15](#), which states:

- (a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.
- (b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:
 - (1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;
 - (2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and
 - (3) The property is resold, rented or leased in the same form in which it was purchased.

Taxpayer does not disagree with the proposed assessment; it does argue that it is entitled to an offsetting credit of the sales tax it paid at the time it originally purchased the rental equipment. During the course of the original audit, taxpayer was given credit for sales tax paid on the purchase of certain equipment pursuant to [45 IAC 2.2-5-15](#). Taxpayer has submitted nineteen additional receipts and asks that it also be given credit for these items.

Under IC § 6-8.1-5-1(c) "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Taxpayer has not proven that the original assessment was incorrect but has submitted evidence sufficient to warrant requesting that the audit division review the nineteen invoices, verify that sales tax was paid on the original purchases, and provide an offsetting credit as it deems appropriate.

FINDING

Taxpayer's protest is sustained to the extent that the audit division deems it appropriate to provide an offsetting credit against the original proposed assessment.

II. Ten-Percent Negligence Penalty.

DISCUSSION

Taxpayer believes that it is entitled to abatement of the ten-percent negligence penalty on the ground that it "was under the impression that if they paid sales tax on the purchase of the equipment that their sales tax

obligation had been met." Taxpayer states that sales tax was "due on the rental payments it received."

IC § 6-8.1-10-2.1(a)(3) requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. IC § 6-8.1-10-2.1(a)(4) requires a ten-percent penalty if the taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment."

IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to... pay the full amount of tax shown on the person's return... or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the penalty."

Departmental regulation [45 IAC 15-11-2](#)(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation [45 IAC 15-11-2](#)(c) requires that 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 IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment – including the negligence penalty – is presumptively valid.

The Department is unable to agree that Taxpayer has met its burden of demonstrating that it is entitled to abatement of the penalty. Taxpayer was sufficiently sophisticated to understand the advantages attributable to the formation of the S-corporation and may not now argue that it exercised "ordinary business care and prudence" when it failed to collect sales tax on the income derived from the equipment rental.

FINDING

Taxpayer's protest is respectfully denied.

SUMMARY

The audit division is requested to perform a supplemental audit, review the nineteen invoices, and to give taxpayer "credit" for the sales tax paid on the purchase of the equipment. Taxpayer did not act as an "ordinary reasonable taxpayer," and the ten-percent negligence penalty will not be abated.

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