

Letter of Findings Number: 09-0763
Use Tax
For the Year 2008

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ISSUE

I. Use Tax—Imposition.

Authority: IC § 6-8.1-5-1.

Taxpayer protests the Department's assessment of use tax with respect to a vehicle.

STATEMENT OF FACTS

Taxpayer is an individual. In June 2008, Taxpayer purchased a motor vehicle from Seller. The title originally listed the "selling price" and "total price paid" as \$13,200. However, the "3" was overwritten to reflect a "0." Taxpayer presented the title to the Indiana Bureau of Motor Vehicles (BMV) and remitted \$714 in use tax.

BMV forwarded the title to the Indiana Department of Revenue ("Department") for review. After review, the Department determined that the purchase price was \$13,200. As a result, the Department imposed use tax on the additional \$3,000 plus a one-hundred percent fraud penalty. Taxpayer protested the tax assessment but did not separately protest the penalty, the Department conducted an administrative hearing, and this Letter of Findings results.

I. Use Tax—Imposition.

DISCUSSION

Taxpayer protests the assessment of additional use tax with respect to a motor vehicle he purchased.

Under IC § 6-8.1-5-1(c),

(c) If the person has a surety bond guaranteeing payment of the tax for which the proposed assessment is made, the department shall furnish a copy of the proposed assessment to the surety. 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.

Thus, Taxpayer bears the burden of demonstrating that the proposed assessment in dispute is incorrect. In support of his argument, Taxpayer presented a "receipt copy" of the sales agreement between Taxpayer and Seller. The "receipt copy" is little more than a description of the vehicle, a "selling price" and "balance due," and the signatures of Seller and Taxpayer's wife. On the "receipt copy", the "3" appears to have the number "0" written over it as well. Taxpayer asserts that Seller made the changes to the title and sales contract; however, beyond Taxpayer's statement, Taxpayer did not provide any corroborating evidence to substantiate his assertion.

Taxpayer further provided a Kelley Blue Book online printout of the value of his vehicle as of August 9, 2009. The print out shows a lower value than \$13,200. However, the print out was for the value of a vehicle one year after the purchase price—a price that reflects added depreciation, changes in market conditions, and other factors for which Taxpayer made no correction.

In addition, Taxpayer asserts that the vehicle was damaged prior to his purchase; therefore, the purchase price was less than the original \$13,200. However, Taxpayer provided no substantiation of the claimed damage such as a third-party vehicle report or photograph of the vehicle at the time of sale. Further, other than assertions that the damage reduced the value, Taxpayer does not establish how the damage to the vehicle affected the value of the vehicle on the date of purchase.

Finally, the Department requested bank statements, checks, or other third-party documentation that would demonstrate the sales price of the vehicle. Taxpayer provided a loan statement for the vehicle from a third-party lender. The third-party lender became a lienholder on the vehicle. Taxpayer's loan to purchase the vehicle was for \$13,200—the exact amount the Department claimed was the purchase price of the vehicle.

In summary, Taxpayer has not met his burden of proof to demonstrate that the proposed assessment was incorrect. Therefore, Taxpayer's protest is denied.

FINDING

Taxpayer's protest is denied.

Posted: 03/24/2010 by Legislative Services Agency

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