DEPARTMENT OF STATE REVENUE

04-20090693.LOF

Letter of Findings Number: 09-0693
Sales and Use Tax
For Tax Year 2007

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ISSUES

I. Sales and Use Tax – Public Transportation Exemption.

Authority: IC § 6-2.5-1-1 et seq.; IC § 6-2.5-3-4; IC § 6-2.5-5-27; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Panhandle Eastern Pipeline Co. v. Indiana Dep't. of State Revenue, 741 N.E.2d 816 (Ind. Tax Ct. 2001); Carnahan Grain, Inc. v. Indiana Dep't of State Revenue, 828 N.E.2d 465 (Ind. Tax Ct. 2005); Indiana Dep't of State Revenue v. RCA Corp., 310 N.E.2d 96 (Ind. Ct. App. 1974).

Taxpayer protests the assessment of use tax on the purchase of tangible personal property.

II. Tax Administration – Negligence Penalty.

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

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer, an Indiana resident, purchased a pickup truck at an Indiana dealership without paying sales tax at the time of the purchase or self-assessing use tax and remitting it to the Department. Pursuant to an investigation, the Department assessed Taxpayer use tax, interest, and penalty. Taxpayer timely protested. A hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales and Use Tax – Public Transportation Exemption.

DISCUSSION

Pursuant to an investigation, the Department concluded that Taxpayer was not entitled to the public transportation exemption. The Department thus assessed Taxpayer use tax, interest, and penalty on the purchase of a 2007 Dodge 2500 4X4 pickup truck because Taxpayer did not pay the sales tax at the time of the purchase. Taxpayer, to the contrary, claimed that it was eligible for the public transportation exemption.

As a threshold issue, 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. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Indiana imposes a sales tax on retail transactions and a complementary use tax on tangible personal property that is stored, used, or consumed in the state. IC § 6-2.5-1-1 et seq. In general, all purchases of tangible personal property are subject to sales and/or use tax. An exemption from use tax is granted for transactions where sales tax was paid at the time of the purchase pursuant to IC § 6-2.5-3-4. Additionally, in certain circumstances, exemptions from sales and/or use tax are available, for example, a public transportation exemption is available under IC § 6-2.5-5-27. A statute which provides a tax exemption, however, is strictly construed against the taxpayer. Indiana Dep't of State Revenue v. RCA Corp., 310 N.E.2d 96, 97 (Ind. Ct. App. 1974).

IC § 6-2.5-5-27 states:

> Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

In Panhandle Eastern Pipeline Co. v. Indiana Dep't. of State Revenue, 741 N.E.2d 816 (Ind. Tax Ct. 2001), the court addressed the issue of whether a taxpayer qualifies for the public transportation exemption. The court stated:

> The public transportation exemption provided by section 6-2.5-5-27 is an all-or-nothing exemption. If a taxpayer acquires tangible personal property for predominate use in providing public transportation for third parties, then it is entitled to the exemption. If a taxpayer is not predominately engaged in transporting the property of another, it is not entitled to the exemption. Id. at 819.

Four years later, in Carnahan Grain, Inc. v. Indiana Dep't of State Revenue, 828 N.E.2d 465 (Ind. Tax Ct. 2005), the court further explained the proper application of Panhandle Eastern Pipeline, as follows:

> If [] the property is used predominantly for third-party public transportation, then the taxpayer is entitled to the exemption. Conversely, if the property is not predominantly used for third-party public transportation (i.e., it is predominantly used to transport the taxpayer's own property), then the taxpayer is not entitled to the exemption. Id. at 468.

Therefore, the public transportation exemption applies to a taxpayer only when the taxpayer's property is

predominately used in public transportation of the property owned by another person.

To support his protest, Taxpayer submitted copies of a lease agreement executed between Taxpayer (Lessor) and his employer (Lessee), a 1099 Form for tax year 2008, and a certificate of insurance. The lease simply stated that Taxpayer "shall provide the use of his truck during all working hours to service and maintain all tri-axles, semi-tractors, [and] equipment" owned by Lessee. Taxpayer claimed that Lessee was entitled to the public transportation and, consequently, Taxpayer, as owner of the truck and Lessor, was also entitled to the public transportation exemption.

During the administrative hearing, Taxpayer stated that he used the truck in question to commute from his home to work, and vice-versa. Taxpayer further explained that, according to the lease, Taxpayer was only responsible for providing mechanical assistance to his employer's truck drivers when the drivers encountered road hazard during delivery. For example, when his employer's delivery trucks broke down on the road due to a flat tire or due to running out of fuel, Taxpayer would bring his tool box and drive his truck to fix the flat tire or bring the fuel to refill the trucks waiting on the roadside. Taxpayer's employer reimbursed the costs that Taxpayer incurred when performing these tasks as well as the cost of maintaining the truck.

Based on the information mentioned above, Taxpayer did not predominately transport property owned by someone other than Taxpayer for consideration. Taxpayer thus was not entitled to public transportation exemption.

In conclusion, Taxpayer bears the burden of proving the Department's assessment was incorrect. Taxpayer failed to meet his burden of proof that he was entitled to the public transportation exemption. Since Taxpayer did not pay sales tax at the time of the retail transaction, use tax is properly imposed.

FINDING

Taxpayer's protest is respectfully denied.

II. Tax Administration – Negligence Penalty.

DISCUSSION

Taxpayer also protests the imposition 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 did not provide sufficient documentation establishing that its failure to pay tax or timely remit tax was due to reasonable cause and not due to negligence.

FINDING

Taxpayer's protest on the imposition of the negligence penalty is respectfully denied.

SUMMARY

For the reasons discussed above, Taxpayer's protest on the imposition of use tax and the negligence penalty

are respectfully denied.

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