

Supplemental Letter of Findings: 10-0166
Use Tax
For the Year 2007

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ISSUES

I. Use Tax – Recreational Vehicle.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-8.1-5-1; [45 IAC 2.2-3-4](#).

Taxpayer protests the imposition of Indiana use tax on the use of recreational vehicles.

II. Tax Administration – Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of negligence penalty.

STATEMENT OF FACTS

Taxpayer is an individual and is a resident of Indiana. The Indiana Department of Revenue ("Department") determined that in 2007 Taxpayer purchased recreational vehicles ("RVs") in Kentucky and had been using the RVs in Indiana without having paid sales tax in any jurisdiction. As a result, the Department issued proposed assessments for use tax, ten percent negligence penalty, and interest. Taxpayer protests that the RVs were purchased and titled by a Montana LLC, of which Taxpayer and his wife are the sole members, and that no Indiana use tax is due. An administrative hearing was conducted and a Letter of Findings was issued denying Taxpayer's protest of the use tax and penalty. Taxpayer requested rehearing on the basis that it had additional documentation to submit in support of its protest. The rehearing was granted and held. This supplemental Letter of Findings ensues. Further facts will be supplied as required.

I. Use Tax – Recreational Vehicle.

DISCUSSION

Taxpayer protested the imposition of use tax on what the Department presumed was the use and storage of two RVs in Indiana. The Department imposed use tax, penalty, and interest after determining that Taxpayer did not pay sales tax at the time the RV was purchased in Kentucky, that Taxpayer and his wife were residents of Indiana, filed income tax returns in Indiana, had Indiana drivers' licenses, and voted in Indiana, therefore raising the presumption that Taxpayer had been using and storing the RVs in Indiana. Taxpayer protested that the RVs were titled by a Montana LLC and that all legal documents establishing the existence of the LLC were properly filed in Montana. Taxpayer also argued that the first RV ("RV1") was returned to the dealer soon after it was purchased because its roof leaked. The dealer allowed Taxpayer to trade-in RV1 for a second RV ("RV2"). Taxpayer then argued that RV2 was used in Texas and not in Indiana.

The Department noted that the burden of proving a proposed assessment wrong rested with the person against whom the proposed assessment was made, as provided by IC § 6-8.1-5-1(c).

The sales tax is imposed by IC § 6-2.5-2-1, which states:

- (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.

The use tax is imposed under IC § 6-2.5-3-2(a), which states:

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

Also, [45 IAC 2.2-3-4](#) provides:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when tangible personal property is acquired in a retail transaction and is stored, used, or consumed in Indiana, Indiana use tax is due if sales tax has not been paid at the point of purchase.

At hearing Taxpayer had argued that both RV1 and RV2 were purchased by a Montana LLC and licensed in Montana. Taxpayer stated that the Montana LLC's legal documents were properly filed in Montana, and, since Montana did not subject the Kentucky transaction to sales or use tax, Taxpayer was in the clear. The original Letter of Findings addresses the issue of the Montana LLC in the context of "sham transactions." This Supplemental Letter of Findings will not repeat that analysis, but refers to the Letter of Findings # 04-20100166 on this issue without amendment.

The more pertinent argument Taxpayer makes in his protest of the assessment of Indiana use tax is that the RVs were not used in Indiana. Taxpayer argued that for several years he and his wife would spend at least six months a year in Texas, where they resided in their RVs and consequently the RVs were never used or stored in Indiana. Taxpayer explained that when he and his wife decided to discontinue their seasonal residence in Texas they traded in for a newer, smaller RV that they now keep in Indiana and that is properly titled in Indiana. At issue in this protest are the two RVs referenced above as RV1 and RV2 which were purchased in 2007. The Department's assessment of tax in each case allowed for trade-in credit, so that issue will not be addressed. The question pertains to whether or not RV1 and/or RV2 were used in Indiana.

During the hearing, Taxpayer was asked for any documentation that would support the contention that he and his wife lived in Texas for part of the year and that documented use of the RVs in Texas. Taxpayer was afforded additional time to provide such documentation, but no such documentation was forthcoming subsequent to the hearing and before the Letter of Findings was issued. During the rehearing process, however, Taxpayer provided additional documentation in support of the protest.

Taxpayer provided sufficient documentation to show that RV1 was purchased on April 19, 2007, and returned to the dealer before May 5, 2007, with the promise of trading RV1 in for another RV. Taxpayer also presented additional documentation (such as purchase agreements, title and registration information, RV park rental receipts, utility receipts, credit card receipts, cancelled checks, etc.) showing the purchase of RV2 in November of 2007 and substantiating Taxpayer's argument that he and his wife and RV2 were in Texas from November 2007 until May 2008. Taxpayer stated that shortly thereafter RV2 was traded in at the same Kentucky dealer for a smaller RV (which is not a subject of this protest). Information available to the Department shows that RV2 was under new ownership by fall of 2008.

Therefore, given the preponderance of facts and documentation stated above, this Supplemental Letter of Findings reverses the original Letter of Findings and agrees that Taxpayer has shown that the RVs were not used in Indiana and therefore are not subject to Indiana use tax.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration – Negligence Penalty.

DISCUSSION

Taxpayer also protested the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation [45 IAC 15-11-2](#)(b) clarifies the standard for the imposition of the negligence penalty as follows:

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 standard for waiving the negligence penalty is given at [45 IAC 15-11-2](#)(c) 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 affirmatively established that the RVs at issue were not subject to Indiana use tax, thus rendering the assessment of negligence penalty moot.

FINDING

Taxpayer's protest is sustained.

CONCLUSION

Taxpayer's protest of the assessment of use tax and penalty on the Taxpayer's presumed use of the subject RVs in Indiana is sustained.

