

Supplemental Letter of Findings: 04-20100188
Use Tax
For the Year 2008

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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 a recreational vehicle.

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

The Indiana Department of Revenue ("Department") determined that in 2008 Taxpayer purchased a recreational vehicle ("RV") in Kentucky and had been using the RV in Indiana without having paid sales tax in any jurisdiction. As a result, the Department issued a proposed assessment for use tax, ten percent negligence penalty, and interest. Taxpayer protests that the RV was 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.

Taxpayer's protest was administratively closed when he did not participate in the scheduled hearing. However, Taxpayer's protest was later reopened for supplemental proceedings when Taxpayer contended that he resided out of state and had not received the Department's correspondence regarding the hearing. A supplemental administrative process ensued which results in this Supplemental Letter of Findings. 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 an RV 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. Upon further investigation the Department determined that Taxpayer had an Indiana driver's license, an Indiana cell phone, and was registered to vote in Indiana, therefore raising the presumption that Taxpayer had been using and storing the RV in Indiana.

The Department notes that the burden of proving a proposed assessment wrong rests 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.

Taxpayer's argument that the RV was properly registered in Montana will be disregarded for the purpose of this determination since the dispositive question is whether or not Taxpayer used the RV in Indiana. Taxpayer protested that the RV was never used in Indiana because once Taxpayer picked up the RV from the dealer in Kentucky, he and his wife made their way to Florida where they resided with the RV for some time. Taxpayer further stated that he and his wife reside in Tennessee.

During the rehearing process, Taxpayer was asked for any documentation that would support the contention that he and his wife did not live in Indiana in 2008 and that the RV was used out of state.

Taxpayer provided sufficient documentation to show that Taxpayer did not take possession of the RV until March 2008 and that Taxpayer, his wife, and the RV were at various campsites outside of Indiana for the remainder of the year – mostly in Florida. Therefore, given the preponderance of facts and documentation stated above, this Supplemental Letter of Findings sustains Taxpayer's protest and agrees that Taxpayer has shown that

the RV was not used in Indiana and therefore is 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 RV at issue was 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 RV in Indiana is sustained.

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