DEPARTMENT OF STATE REVENUE

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Letter of Findings: 11-20120593; 11-20120594; 11-20120595; 11-20120596; 11-20120597; 11-20120598; 11-20120599; 11-20120600; 11-20120601; 11-20120602; 11-20120603; 11-20120604; 11-20120605; 11-20120606
Motor Vehicle (Auto) Rental Excise Tax
For Tax Years 2009, 2010, and 2011

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ISSUE

I. Auto Rental Excise Tax – Imposition.

Authority: IC § 6-2.5-1-5; IC § 6-2.5-2-1; IC § 6-2.5-2-2; IC § 6-6-9-2; IC § 6-6-9-7; IC § 6-6-9-9; IC § 6-6-9-10; 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); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); 45 IAC 2.2-4-27.

Taxpayer protests the assessments on Fuel Refill Charges that customers paid when the customers chose to return the rental cars without refilling the fuel.

STATEMENT OF FACTS

Taxpayer owns a rental car fleet and operates a motor vehicle rental business at several locations in Indiana and elsewhere. Taxpayer provides its rental cars with sufficient fuel to its customers ("Customers") and Customers are required to return the same amount of the fuel when they return the cars. Customers usually rent or lease Taxpayer's vehicles for periods of less than 30 days.

At the commencement of the rental transactions, in addition to the standard rental charge, Taxpayer offers Customers several rental car options. One of the options is to return the rental car without refilling the fuel tank. If Customers choose that option, Taxpayer imposes a Fuel Refill Charge. Taxpayer further offers Customers two alternatives with respect to the Fuel Refill Charge: Customers can (1) pre-pay or (2) post-pay based on the consumption of the fuel. The pre-pay option provides Customers an option, before using the rental vehicles, to lock into a lower price for the fuel they are going to consume when they return the cars. The post-pay option allows Customers to postpone their decisions until they return the rental cars. For example, Customers can choose to pre-pay $3 per gallon prior to their use of the cars or post-pay $5 per gallon when they return the rental cars without refilling the fuel. The total amount of the Fuel Refill Charges for Customers who choose to pre-pay or post-pay is not determined at this time. Taxpayer's employees note Customers' choice(s) in the rental agreements and Customers initial and acknowledge their choice(s) stated in the rental agreements.

Before Customers use the rental cars, Taxpayer and Customers inspect the cars at Taxpayer's parking lot. Taxpayer notes the condition of the cars and the amount of fuel indicated on the dashboard of the cars. When the lease periods end, Customers are expected to return the rental cars in good condition (similar to the condition before Customers use the cars), which includes the same level of fuel in the cars. Most of Customers return the rental cars with the same level of fuel in the cars while some Customers choose to return the rental cars without refilling the fuel.

Regardless of whether Customers choose the options offered by Taxpayer, Taxpayer bills Customers and Customers pay after they return the rental cars. Taxpayer's invoices generally contain a standard rental charge as well as sales tax and auto rental excise tax on the standard rental charge. For Customers who return the rental cars without refilling the fuel, in addition to the standard rental charge, Taxpayer charges a separately stated line item (i.e., Fuel) in the invoices; however, the invoices do not specifically state whether Customers elected the pre-pay or post-pay options. Taxpayer's invoices show that it does not collect either sales tax or auto rental excise tax on the "Fuel" charge. Taxpayer subsequently refills the fuel tanks of the cars at nearby gas stations and pays

the advertised price.

The Indiana Department of Revenue ("Department") audited Taxpayer's business records for 2009 through 2011 tax years. Taxpayer and the Department agreed to utilize a sampling method to project the audit result. Pursuant to the audit, the Department determined that Taxpayer failed to collect sales tax and auto rental excise tax on Fuel Refill Charges for the years at issue.

The Department's audit also determined that Taxpayer did not pay sales tax or self-assess and remit use tax on certain purchases of tangible personal property, which Taxpayer used for its business. The audit thus assessed Taxpayer additional taxes and interest.

Taxpayer protested the assessments on the Fuel Refill Charges. An administrative hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest concerning the assessments of auto rental excise tax on its Fuel Refill Charges. Letter of Findings 04-20120592 addresses Taxpayer's protest of the sales tax assessments. Additional facts will be provided as necessary.

I. Auto Rental Excise Tax – Imposition.

DISCUSSION

The Department's audit determined that Taxpayer's Fuel Refill Charges were part of consideration of the rental transactions and thus were included in the gross retail income subject to the auto rental excise tax. The audit noted, in relevant part, that:

> Audit discovered rental invoices including charges for fuel to refill vehicles upon return to the level of fuel included at the inception of rental. The fuel refill charge was omitted from taxable rental income. According to IC 6-6-9, the full amount of the rental charge is subject to motor vehicle rental excise tax. (Page 4 to Audit Summary).

Taxpayer acknowledged that the auto rental excise tax is imposed on the gross retail income received by the retail merchant for the rental. Since the definition of the gross retail income is the same as it is for the sales tax purposes, Taxpayer claimed that the Fuel Refill Charge is not subject to the auto rental excise tax if the charge is not subject to the sales tax. Taxpayer asserted that the Fuel Refill Charge is not subject to the sales tax because it is not part of the rental transaction. Taxpayer further argued that the Fuel Refill Charge is not subject to sales tax because the charge is (1) a reimbursement for its additional costs due to Customers' failure to refill the vehicles, and (2) an optional, nontaxable, and divisible service from the underlying rental transaction. Taxpayer further argued that it was the consumer of the fuel and properly paid sales tax when it refilled the cars at the nearby gas stations.

As a threshold issue, all tax assessments are prima facie evidence that the Department's assessment of tax is presumed correct. "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." 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 Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). The sales tax "is measured by the gross retail income received by a retail merchant in a retail unitary transaction." IC § 6-2.5-2-2(a). Additionally, a rental or leasing transaction involving tangible personal property also constitutes a retail transaction and "the gross receipts from renting or leasing tangible personal property are taxable." 45 IAC 2.2-4-27. A lessor of the leasing tangible personal property is "deemed to be a retail merchant" – as agent for the state of Indiana – is responsible for collecting the amount of actual receipts from the rental or leasing. 45 IAC 2.2-4-27(b). "The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business." 45 IAC 2.2-4-27(d)(1). "The gross receipts include any consideration received from the exercise of an option contained in the rental of lease agreement." Id.

In addition to the sales tax, Indiana also imposes an auto rental excise tax, which equals four (4) percent of the gross retail income received by the retail merchant for the rental of passenger motor vehicles or trucks in Indiana outlined in IC § 6-6-9.

IC § 6-6-9-7 states:

> (a) An excise tax, known as the auto rental excise tax, is imposed upon the rental of passenger motor vehicles and trucks in Indiana for periods of less than thirty (30) days.
>
> (b) The auto rental excise tax imposed upon the rental of a passenger motor vehicle or truck equals four percent (4 [percent]) of the gross retail income received by the retail merchant for the rental.

The "gross retail income" is defined under IC § 6-6-9-2, which states, "[a]s used in this chapter, 'gross retail income' has the meaning set forth in IC § 6-2.5-1-5, except that the term does not include taxes imposed under IC 6-2.5."

IC § 6-2.5-1-5, in relevant part, further provides:

> (a) Except as provided in subsection (b), "**gross retail income" means the total amount of consideration**, **including** cash, credit, property, and **services**, **for which tangible personal property is** sold, **leased, or rented**, valued in money, whether received in money or otherwise, without any deduction for:

(1) the seller's cost of the property sold;
(2) the **cost of materials** used, labor or **service cost**, interest, losses, all costs of transportation to the seller, **all taxes imposed on the seller**, and **any other expense of the seller**;
(3) **charges by the seller for any services necessary to complete the sale**, other than delivery and installation charges;
(4) delivery charges; or
(5) consideration received by the seller from a third party if:
(A) the seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
(B) the seller has an obligation to pass the price reduction or discount through to the purchaser;
(C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
(D) the price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.
For purposes of subdivision (4), delivery charges are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of property, including but not limited to transportation, shipping, postage, handling, crating, and packing.
(b) "Gross retail income" does not include that part of the gross receipts attributable to:
...
(5) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.... (**Emphasis added**).

IC § 6-6-9-9 also provides that:

The person who rents a passenger motor vehicle or truck is liable for the auto rental excise tax. The person shall pay the tax to the retail merchant as a separate amount added to the consideration for the rental. The retail merchant shall collect the tax as an agent for the state.

IC § 6-6-9-10(a) further provides that "the auto rental excise tax shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5."

Thus, in general, a lessor of a rental transaction involving passenger motor vehicle or truck is required to collect and remit four percent of the gross retail income received as the auto rental exercise tax under IC § 6-6-9. The gross retail income, for the purposes of the auto rental excise tax, means the total amount of consideration, including cash, credit, property, and services, for which the vehicle is leased or rented, valued in money, without any deduction for certain costs or charges outlined in IC § 6-2.5-1-5(a)(1) though (5).

Taxpayer, in this instance, stated that only the rental transactions subject to sales tax and involving the rental of motor vehicles are subject to the auto rental excise tax. Thus, Taxpayer claimed that the Fuel Refill Charge is not subject to the auto rental excise tax because it is not subject to sales tax. Taxpayer claimed that, before the rental transactions occurred, it offered Customers various options, which included the option of returning the rental cars without refilling the fuel. Taxpayer also stated that it specifically informed Customers that the Fuel Refill Charge is an additional cost outside the standard fee for the rental of the vehicle. Taxpayer thus maintained that the Fuel Refill Charge is for an optional service which is separate and divisible from the underlying rental transaction and is not subject to sales tax. Alternatively, Taxpayer asserted that because it supplied Customers the rental cars with fuel, Taxpayer itself was the consumer of the fuel under 45 IAC 2.2-4-27(d)(4). Thus, Taxpayer maintained that it properly paid sales tax at the nearby gas stations when it refilled the tanks of its rental cars, and that the Fuel Refill Charge is intended to reimburse Taxpayer for the cost of the fuel. Taxpayer contended that the audit's assessment of the auto rental excise tax on the Fuel Refill Charges was tax on a tax which it already paid, resulting in tax pyramiding. Taxpayer submitted three sample copies of its rental agreements and invoices to support its protest.

Upon reviewing Taxpayer's documentation, however, the Department is not able to agree. First, Taxpayer's documentation demonstrated that, at the outset of the rental transactions, it offered Customers various options, which include returning the rental car without refilling the fuel tank. Specifically, pursuant to the rental agreements, Customers were afforded options when they returned the rental cars without refilling the fuel tanks, including pre-pay or post-pay the fuel based on the amount of fuel Customers consumed. Thus, Taxpayer offered, and Customers exercised, the options contained in the rental agreements. Taxpayer noted Customers' choice(s) in the rental agreements; Customers initialed and acknowledged their choice(s) stated in the rental agreements. As a result, the Fuel Refill Charges arose from, and were attributed to, the options chosen by Customers concerning the rental cars pursuant to the rental agreements, and, therefore, were part of the consideration of the rental transactions. Thus, the optional Fuel Refill Charge, as determined in the Letter of Findings 04-20120592, is subject to the sales tax pursuant to IC § 6-2.5 and 45 IAC 2.2-4-27.

Additionally, as mentioned above, the "gross retail income" is defined in IC § 6-2.5-1-5(a), which "means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property is... leased, or rented, valued in money, whether received in money or otherwise, without any deduction for: (1)

the seller's cost of the property sold; (2) the cost of materials used, labor or service cost,... losses... and any other expense of the seller; [or] (3) charges by the seller for any services necessary to complete the sale." Taxpayer's documentation showed that the Fuel Refill Charges were imposed when Customers returned the rental cars without refill. Taxpayer asserted that the Fuel Refill Charge is to pay for its service and costs of refilling the fuel tanks of those rental cars. Thus, the Fuel Refill Charges were part of consideration for which the rental cars were rented. Thus, the gross retail income, for the purposes of the auto rental excise tax, includes the optional Fuel Refill Charges pursuant to IC § 6-2.5-1-5(a).

Taxpayer invited the Department to conclude, in its favor, that an auto rental excise tax on the Fuel Refill Charges is a tax on a tax, resulting in tax pyramiding that has been discouraged by the Indiana legislature. The Department, however, must respectfully decline Taxpayer's invitation. Although the auto rental excise tax is imposed on a rental transaction which is also qualified as a retail transaction for sales tax purposes, the auto rental excise tax is a different excise tax intended and enacted by the Indiana General Assembly. IC § 6-6-9-2 refers to the "gross retail income" defined in IC § 6-2.5-1-5, but it specifically excludes the taxes imposed under IC 6-2.5. Additionally, the Indiana General Assembly has addressed Taxpayer's concern by allowing various exemptions to the sales tax, which are outlined under IC § 6-2.5-5 et seq. As discussed above and in the Letter of Findings 04-20120592, for sales/use tax purposes, Taxpayer, as a lessor of a rental transaction, is considered to be a retail merchant of a retail transaction. Pursuant to 45 IAC 2.2-4-27(a), while the gross receipts from renting or leasing tangible personal property are subject to sales/use tax, exemptions to the sales/use tax are also afforded to an equivalent sales transaction, such as the rental transaction in this instance. Thus, the auto rental excise tax imposed on the gross retail income, including the Fuel Refill Charges, received by Taxpayer for the rental is not a tax on a tax.

In short, the Fuel Refill Charges were part of consideration with respect to the rental transactions and were included in the gross retail income received by Taxpayer for the rental. Thus, the Fuel Refill Charges were subject to the auto rental excise tax.

FINDING

Taxpayer's protest is respectfully denied.

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