

Letter of Findings Number: 04-20130352
Sales/Use Tax
For Tax Years 2010 & 2011

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ISSUE

I. Sales/Use Tax – Imposition.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-4-1; IC § 6-8.1-5-1; IC § 6-8.1-5-4; 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).

Taxpayer protests the proposed assessments, claiming it was not responsible for some of the sales tax.

STATEMENT OF FACTS

Taxpayer is an Indiana automobile dealership that sells used cars. In late 2012 through early 2013, the Indiana Department of Revenue ("Department") conducted a sales/use tax audit of Taxpayer's business records for 2010 and 2011 tax years. The Department found that Taxpayer failed to maintain adequate business records. Based on the best information available at the time of the audit, the Department determined that Taxpayer had additional taxable sales for the tax year 2011 for which it did not collect and remit sales tax to the Department. 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.

Taxpayer only protested the assessments of additional taxable sales for tax year 2011. An administrative hearing was held. During the hearing, Taxpayer requested and was given more time to submit additional documentation to support its protest after the hearing. However, Taxpayer did not submit any additional documentation after the hearing. Thus, this Letter of Findings is based on the information within Taxpayer's protest file. Additional facts will be provided as necessary.

I. Sales/Use Tax – Imposition.

DISCUSSION

The Department's audit determined that Taxpayer failed to collect sales tax on tangible personal property, which it sold to its customers during 2011. Taxpayer, at the hearing, claimed that it was not responsible for the sales tax. However, it should be noted that Taxpayer did not provide any supporting documentation after the hearing.

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 a sales tax on retail transactions. IC § 6-2.5-2-1 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.

IC § 6-2.5-4-1, in relevant part, provides:

- (a) A person is a retail merchant making a retail transaction when he engages in selling at retail.
- (b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:

- (1) acquires tangible personal property for the purpose of resale; and
- (2) transfers that property to another person for consideration.

...

- (e) The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:

- (1) the price of the property transferred, without the rendition of any service; and
- (2) except as provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records.

For purposes of this subsection, a transfer is considered to have occurred after delivery of the property to the purchaser.

Accordingly, Taxpayer, as a retail merchant selling tangible personal property and also as an agent for the

State, is responsible for collecting and remitting the sales tax. The sales tax is seven percent of the gross retail income received by Taxpayer in a retail unitary transaction—a separate added amount to the consideration in the transaction.

IC § 6-8.1-5-1(b), in relevant part, states "[i]f the department reasonably believes that a person has not reported the proper amount of tax due, **the department shall** make a proposed assessment of the amount of the unpaid tax **on the basis of the best information available to the department**. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail." (**Emphasis added**).

IC § 6-8.1-5-4(a) further provides:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. **The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.** (**Emphasis added**).

At the hearing, Taxpayer stated that, as a used car dealer, it often searched for potential used cars to buy from various individuals. Taxpayer further explained that those sales often required cash payments, and thus it would withdraw money from its bank the day prior to the scheduled dates to examine those cars. Taxpayer asserted that when it determined that it could not purchase those cars after examining the cars, it deposited the money back into its bank account. However, the Department's audit erroneously concluded that those deposits were additional taxable sales. To support its protest, Taxpayer submitted copies of its March, April, and June 2011 bank statements.

Upon review, however, Taxpayer's documentation did not support its assertion. Taxpayer's documentation demonstrated that the amount it withdrew from the account and the amount that it claimed it deposited back into its account did not match. Given the totality of the circumstances, in the absence of other supporting documentation, the Department is not able to agree that Taxpayer met its burden of proof to demonstrate that it was not responsible for collecting the sales tax for those additional taxable sales.

In short, Taxpayer's protest is denied.

FINDING

Taxpayer's protest is respectfully denied.

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