

**Letter of Findings Number: 04-20130659**  
**Income Tax**  
**For Tax Year 2011**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

**ISSUE**

**I. Use Tax – Claiming Horses.**

**Authority:** IC § 4-31-3-1; IC § 4-31-3-9; IC § 6-2.5-1-2; IC § 6-2.5-1-27; IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-3-6; IC § 6-2.5-4-1; IC § 6-2.5-5-1; IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Rhoades v. Indiana Dept. of State Revenue, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); USAir, Inc. v. Indiana Dept. of State Revenue, 623 N.E.2d 466 (Ind. Tax Ct. 1993); [45 IAC 2.2-3-4](#); [45 IAC 2.2-5-5](#); [71 IAC 6.5-1-1](#); [71 IAC 6.5-1-2](#); [71 IAC 6.5-1-6](#); Black's Law Dictionary (7th ed. 1999).

Taxpayer protests the imposition of use tax.

**STATEMENT OF FACTS**

Taxpayer is a non-resident individual. The Indiana Department of Revenue ("Department") found that Taxpayer purchased a horse in Indiana by means of a "claiming transaction." The Department assessed use tax on the purchase price of the horse. Taxpayer protests the assessment of use tax. An administrative hearing was held, and this Letter of Findings results.

**I. Use Tax – Claiming Horses.**

**DISCUSSION**

The Department found that Taxpayer purchased a horse in Indiana by means of a "claiming transaction" and proposed an assessment of use tax on the purchase price of the horse. Taxpayer protests the assessment of use tax. All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). The issue before the Department is whether Taxpayer met his burden to prove the Department's assessment is incorrect.

To determine whether Taxpayer has met his burden, the Department will examine (1) whether the purchase of a horse in a "claiming transaction" is a transaction subject to sales or use tax, (2) if so, if a "claiming transaction" is exempt from sales and use tax, and (3) who is responsible for paying the sales or use tax resulting from a "claiming transaction" if any is due.

**A. Taxpayer's "claiming transaction" is subject to use tax.**

Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a). Indiana imposes a complementary use tax on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction . . ." IC § 6-2.5-3-2(a); [45 IAC 2.2-3-4](#). The use tax is "functionally equivalent to [the] sales tax," and "ensure[s] that non-exempt retail transactions that escape sales tax liability are nevertheless taxed." Rhoades v. Indiana Dept. of State Revenue, 774 N.E.2d 1044, 1047-48 (Ind. Tax Ct. 2002); USAir, Inc. v. Indiana Dept. of State Revenue, 623 N.E.2d 466, 469 (Ind. Tax Ct. 1993).

There are two components that must be met for use tax to apply: (1) the transaction must be a retail transaction involving tangible personal property; and (2) the tangible personal property was used, stored or otherwise consumed in Indiana. IC § 6-2.5-3-2(a).

Pursuant to its statutory authority, the Indiana Horse Racing Commission promulgated rules governing claiming transactions. See IC § 4-31-3-1 and IC § 4-31-3-9. The following regulations indicate that a "claiming transaction" is a retail transaction involving tangible personal property subject to the sales and use tax.

[71 IAC 6.5-1-1](#)(b), states in part:

Title to a claimed horse shall be vested in the successful claimant at the time the horse leaves the starting gate and is declared an official starter. The successful claimant shall then become the owner of the horse whether it be alive or dead, sound or unsound, or injured at any time, during the race or after.

[71 IAC 6.5-1-2](#) states:

(a) Any horse starting in a claiming race is subject to be claimed for its entered price by any:

- (1) licensed owner; or
- (2) holder of a valid claim certificate; or
- (3) licensed authorized agent acting on behalf of an eligible claimant.

(b) Every horse claimed shall race for the account of the original owner, but title to the horse shall be transferred to the claimant at the time the horse leaves the starting gate. The successful claimant shall

become the owner of the horse, regardless of whether it is alive or dead, sound or unsound, or injured prior to, during, or after the race.

[71 IAC 6.5-1-6](#) states in relevant part:

(a) Upon successful claim, the stewards shall issue, upon forms approved by the commission, an authorization of transfer of the horse from the original owner to the claimant. Copies of the transfer authorization shall be forwarded to and maintained by the stewards and the racing secretary. Upon notification by the stewards, the horsemen's bookkeeper shall immediately debit the claimant's account for the claiming price, applicable taxes, and transfer fees. No claimed horse shall be delivered by the original owner to the successful claimant until authorized by the stewards.

...

(e) Ownership interest in any horse claimed from a race shall not be resold or transferred back to the original owner for thirty (30) days after such horse was claimed, except by claim from a subsequent race.

...

A retail transaction is one made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2. Selling at retail means a retail merchant "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration" in the ordinary course of the merchant's business. IC § 6-2.5-4-1(b). Tangible personal property is defined as personal property that "can be seen weighed, measured, felt, or touched . . . ." IC § 6-2.5-1-27. Personal property is defined as "any moveable or intangible thing that is subject to ownership and not classified as real property." Black's Law Dictionary 1233 (7th ed. 1999). Real property is defined as "land and anything growing on, attached to, or erected on it . . . ." Black's Law Dictionary 1234 (7th ed. 1999).

A horse is tangible personal property since it is moveable, capable of being seen, weighed, measured, felt, touched, and not land. A transfer of ownership of a horse occurs during a "claiming transaction" at the moment the horse leaves the starting gate. This occurs in the ordinary course of business. The "claiming transaction" in this case was the transfer of tangible personal property (the horse) to another person (Taxpayer) for consideration (\$10,000) in the ordinary course of business. Therefore, the Taxpayer's "claiming transaction" is a retail transaction subject to sales or use tax.

For the purposes of Indiana use tax, "[u]se" means the exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The Indiana Tax Court has recognized that this is a "broad definition, leading to a very low threshold of taxability. Almost any act not otherwise exempt will constitute a taxable use." USAir, Inc., 623 N.E.2d at 469. A transfer of ownership occurs during the "claiming transaction" at the point when the horse leaves the starting gate. [71 IAC 6.5-1-1\(b\)](#); [71 IAC 6.5-1-2](#). The horse, as the Taxpayer's property, then raced. In this case, the horse transferred to the claimant upon the start of the race, and the racing of a horse in Indiana constitutes "use" of the horse.

A "claiming transaction" is subject to the Indiana sales and use taxes in that it is a retail transaction involving tangible personal property. In this case, Taxpayer's purchase of a horse by means of a "claiming transaction" is subject to use tax in that it was a retail transaction involving tangible personal property which was used in Indiana.

#### **B. Taxpayer's "claiming transaction" is not exempt from use tax.**

As there is an exemption available for retail transactions involving animals, the next issue is whether a "claiming transaction" is specifically exempt from sales and use tax.

IC § 6-2.5-5-1, an exemption statute, states:

Transactions involving animals, feed, seed, plants, fertilizer, insecticides, fungicides, and other tangible personal property are exempt from the state gross retail tax if:

- (1) the person acquiring the property acquires it for his direct use in the direct production of food and food ingredients or commodities for sale or for further use in the production of food and food ingredients or commodities for sale; and
- (2) the person acquiring the property is occupationally engaged in the production of food and food ingredients or commodities which he sells for human or animal consumption or uses for further food and food ingredient or commodity production.

Additionally, [45 IAC 2.2-5-5](#) notes in part:

- (a) The raising of saddle horses, harness horses, ponies, donkeys, or any other similar animals not used directly in direct agricultural production does not qualify as agricultural production for "human consumption" under the gross retail sales and use tax act. Consequently, the purchase of supplies, food, materials, and equipment used in raising or maintaining such animals are subject to the sales tax unless the items are directly used or consumed in the production of such animals for resale in the regular course of the purchaser's business.
- (b) The purchase of any of the above animals is subject to the sales tax unless the purchaser is a registered retail merchant and is buying such animal for resale in the regular course of his business.

In order to be exempt from sales or use tax, the purchase of a harness horse, or other similar animal, must be for use "directly in direct agricultural production" or by a purchaser who is a "registered retail merchant and is buying such animal for resale in the regular course of his business." [45 IAC 2.2-5-5](#). Taxpayer provided no

evidence that the purchase of the horse in the "claiming transaction" was for agricultural production. In fact, Taxpayer mentioned that he had raced the horse after the "claiming transaction" at issue. Therefore, the Department cannot find that the Taxpayer's purchase of the horse in the "claiming transaction" at issue is exempt from use tax.

**C. Taxpayer is responsible for payment of use tax on the "claiming transaction."**

Taxpayer argues that it was the racetrack's responsibility to collect any sales tax that might have been due on the "claiming transaction." Therefore, the final issue is identifying who is responsible for the sales and use tax in a "claiming transaction."

In a retail transaction, Indiana imposes the sales tax on the purchasers of tangible personal property and the retail merchant collects the tax as an agent for the state. IC § 6-2.5-2-1(b) states:

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.

(Emphasis added).

However, "[t]he person who uses, stores, or consumes the tangible personal property acquired in a retail transaction is personally liable for the use tax." IC § 6-2.5-3-6(b) (Emphasis added).

While a retail merchant may have a duty to collect the sales tax due on a retail transaction, its failure to do so does not relieve the person who "acquires property in a retail transaction" or who "uses, stores, or consumes the tangible personal property acquired in a retail transaction" from personal liability for the tax due. IC § 6-2.5-2-1(b); IC § 6-2.5-3-6(b). Therefore, in this case, even if the racetrack had a duty to collect sales tax on the "claiming transaction," Taxpayer remains personally liable for the tax due.

**D. Conclusion.**

Taxpayer's purchase of a horse by means of a "claiming transaction" is a retail transaction involving tangible personal property subject to sales and use tax. Taxpayer's purchase of the horse is subject to use tax as Taxpayer used the horse in Indiana. Taxpayer did not provide evidence that the purchase of the horse in a "claiming transaction" was exempt from use tax. Finally, Taxpayer has not shown that sales tax was collected or paid at the point of purchase, so Taxpayer remains personally liable for the unpaid use tax. Taxpayer has not met his burden to show that the Department's proposed assessment is incorrect. Taxpayer's protest of the use tax assessed on the purchase of a horse in a "claiming transaction" is respectfully denied.

**FINDING**

Taxpayer's protest is respectfully denied.

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