

**Letter of Findings: 04-20140369
Gross Retail Tax
For the Years 2011 and 2012**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUE

I. Gross Retail Tax - Exemption Certificates.

Authority: IC § 6-2.5-8-8(a); 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); [45 IAC 2.2-8-12](#)(d).

Taxpayer states that the Department should consider newly submitted exemption certificates from certain of its customers in determining Taxpayer's sales tax liability.

STATEMENT OF FACTS

Taxpayer is an Indiana business which operates a stone quarry. Taxpayer sells stone used in the construction of new and the restoration of existing buildings. The Indiana Department of Revenue ("Department") conducted an audit of Taxpayer's tax returns and business records. The audit resulted in an assessment of additional gross retail tax. Taxpayer disagreed with a portion of that assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Gross Retail Tax - Exemption Certificates.

DISCUSSION

The audit found that Taxpayer made sales to Indiana customers who claimed an exemption from the gross retail ("sales") tax. However, Taxpayer did not obtain exemption certificates from all customers who claimed the exemption. Taxpayer was issued a "Notice of Noncompliance" and provided an opportunity to obtain forms AD-70 ("Special Sales/Use Tax Exemption Certificates") from these customers. In certain instances, Taxpayer was unable to do so. The audit cited to [45 IAC 2.2-8-12](#) as authority for assessing Taxpayer the additional tax. The regulation states in part:

Unless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt purpose. It is, therefore, very important to the seller to obtain an exemption certificate in order to avoid the necessity for such proof. The mere filing of a Registered Retail Merchant Certificate number is not sufficient to relieve the seller of the responsibility to collect the sales tax or prove exempt use by the buyer. [45 IAC 2.2-8-12](#)(d).

Taxpayer maintains that it can now supply additional exemption certificates which serve to establish that some of the transactions at issue in the audit were, in fact, not subject to tax.

Since the audit resulted in the assessment of additional tax, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." 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).

Indiana Code, IC § 6-2.5-8-8(a), provides as follows:

A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the

state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

Taxpayer has provided additional AD-70 forms which - according to Taxpayer - were unavailable from one of its customers during the course of the original audit. Taxpayer believes the Department should adjust the original assessment to reflect the fact that the AD-70's establish that this customer was entitled to purchase stone products without paying sales tax. To the extent that the AD-70's establish the transactions at issue affected the original assessment, Taxpayer is correct. The Audit Division will be requested to revisit the original audit calculations and to make whatever adjustments to the assessments that are justified by the exemption certificates.

FINDING

Subject to review by the Audit Division, Taxpayer's protest is sustained.

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