DEPARTMENT OF STATE REVENUE

04-20140325.LOF

Letter of Findings: 04-20140325
Sales and Use Tax
For Tax 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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.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. Sales Tax - Imposition.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-1-5; IC § 6-2.5-1-6; IC § 6-2.5-2-1; IC § 6-2.5-4-1; 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); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Sales Tax Information Bulletin 28S (December 2009); Sales Tax Information Bulletin 28S (October 2011); Sales Tax Information Bulletin 28S (April 2012).

Taxpayer protests the Department's assessments of additional sales tax.

STATEMENT OF FACTS

Taxpayer is an Indiana dealer selling recreational vehicles, trailers, and motor homes. Taxpayer also sells repair parts and performs repair and maintenance services.

In 2013, the Indiana Department of Revenue ("Department") performed a sales/use tax audit of Taxpayer's business records for tax years 2011 and 2012. Pursuant to the audit, the Department found that Taxpayer collected sales tax but erroneously reported the tax as use tax in its monthly returns. The Department also determined that Taxpayer sells various trailers/ recreational vehicles to Indiana customers but failed to collect and remit sales tax on those items sold. The Department's audit thus assessed additional sales tax and interest.

Taxpayer protested the Department's assessment on one (1) transaction, dated September 28, 2011, in the amount of $36,000. A phone hearing was held. Taxpayer requested additional time to submit supporting documentation. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales Tax - Imposition.

DISCUSSION

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. 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). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); see also Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

The transaction at issue as stated in the audit report is for September 28, 2011, in the amount of $36,000 (the "September 28 Transaction"). Taxpayer argues that the Department's assessment is overstated because the audit erroneously stated that the sales price of the September 28 Transaction was $36,000. Taxpayer asserts that the customer who bought the recreational vehicle in September 28 Transaction also traded in one recreational vehicle. Taxpayer thus claims that it properly collected and remitted the sales tax. The issue in this case is whether in the September 28 Transaction, Taxpayer sold a recreational vehicle and also accepted one as a trade-in (namely, a like-kind exchange) from the same customer.

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 (namely, a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). A retail transaction is defined as "a transaction of a retail merchant that constitutes selling at retail as described in IC § 6-2.5-4-1 . . . or that is described in any other section of IC § 6-2.5-4." IC § 6-2.5-1-2. "A person is a retail merchant making a retail transaction when he engages in selling at retail." IC § 6-2.5-4-1(a). Further, IC § 6-2.5-4-1(b) explains that a person sells at retail when he: "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." The taxable retail transaction includes the amounts the customer paid to the retail merchant for the "price of the property transferred" and for the price of any services that occur prior to the transfer of the property to the purchaser, including any delivery charges. IC § 6-2.5-4-1(e).

Nonetheless, the "gross retail income" of a taxable transaction excludes "the value of any tangible personal property received in a like kind exchange in the retail transaction, if the value of the property given in exchange is separately stated on the invoice, bill of sale, or similar document given to the purchaser[.]" IC § 6-2.5-1-5(b)(1). A "like kind exchange" is the reciprocal exchange of personal property between two (2) persons, when: (1) the property exchanged is of the same kind or character, regardless of grade or quality; and (2) the persons exchanging the property both own the property prior to the exchange. IC § 6-2.5-1-6(a). The Department's Sales Tax Information Bulletin 28S (December 2009), 20100127 Ind. Reg. 045100029NRA, which is applicable in this instance, in relevant part, explains that:

> **I. Amount Subject to Tax**
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> . . .
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> **B. TRADE-IN ALLOWANCE**
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> The deduction for a trade-in allowance applies only to "like-kind exchanges" where the vehicle or trailer to be traded is owned and titled in the name of the customer. A like-kind exchange means a motor vehicle traded for another motor vehicle or a trailer traded for another trailer. A trade-in of a vehicle for a trailer is not a "like-kind exchange" and is not deductible in the calculation of the amount of the taxable gross retail income received by the dealer. Non-like-kind exchanges are merely another form of a payment to the dealer which does not reduce the dealer's gross retail income.
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> The gross trade-in allowance in a like-kind exchange is deductible from the taxable selling price for sales tax purposes.

(**Emphasis is original**). See also Sales Tax Information Bulletin 28S (October 2011), 20110928 Ind. Reg. 045110549NRA, Part II.B; Sales Tax Information Bulletin 28S (April 2012), 20120530 Ind. Reg. 045120259NRA, Part II.B.

At the hearing, Taxpayer first presented a document, dated September 28, 2011, and a $9,980 "Teller's Check" dated July 16, 2011. Taxpayer argued that the final sales price after the "trade-in" allowance was "$9,000" and it properly collected "$630" of sales tax. Taxpayer further claimed that it charged its customer a $350 storage fee.

After the hearing, Taxpayer submitted additional documentation that included evidence of a payment of $840 sales tax through the INTax system for the tax period of August 2011, a ST-108 form, "Odometer Disclosure Statement" forms for two recreational vehicles, a sales contract, and a Certificate of Title for a Vehicle issued by the Indiana Bureau of Motor Vehicles ("BMV's Certificate of Title"). Taxpayer revised its earlier statement and claimed that the final price after the "trade-in" allowance was "$12,000" and that it properly collected "$840" of sales tax on the September 28, 2011 sale.

Upon review, Taxpayer's reliance on its documentation is misplaced. As mentioned earlier, the audit found that the sale of the recreational vehicle at issue was on or about September 28, 2011, but the documentation Taxpayer provided failed to support that sales tax was properly collected on that transaction. Rather, the sales contract that Taxpayer provided showed that a transaction occurred and the customer paid for that purchase in July, 2011. The BMV's Certificate of Title for a Vehicle and Taxpayer's ST-108 statement that Taxpayer provided simply substantiated the fact that a recreational vehicle was purchased from Taxpayer on July 28, 2011. This July 28, 2011 sale, however, was not the sales transaction at issue.

In addition, the documentation presented by Taxpayer demonstrated that on September 22, 2011, it used the INTax system to remit the total sales tax of $840, which it collected for the tax period of August 2011. But, the sales tax remitted was for August 2011, not for the tax period of September 2011. Thus, Taxpayer's supporting documentation presented is irrelevant and beyond the scope of its protest.

Finally, the "Teller's Check," which was endorsed on the back of the check by the customer, contained the customer's clear and legible signature. Taxpayer's sales contract, contrary to the customer's endorsement, showed that a customer's signature that was illegible and appears different than the customer's endorsement signature on the "Teller's Check." The "Odometer Disclosure Statement" forms presented by Taxpayer for two recreational vehicles were only signed by Taxpayer and the customer did not sign. Taxpayer did not explain these discrepancies in the documentation presented.

In the absence of other supporting documentation, Taxpayer's documentation failed to demonstrate that for the September 28 Transaction, it accepted a recreational vehicle as a trade-in (namely, a like-kind exchange) from the same customer to whom it sold a recreational vehicle and/or that it properly collected and remitted the sales tax. Therefore, Taxpayer's documentation as presented failed to show that the Department's assessment is wrong.

FINDING

Taxpayer's protest of the imposition of additional sales tax is denied.

Posted: 02/25/2015 by Legislative Services Agency
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